

(29,553)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 45

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA,
ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1] UNITED STATES OF AMERICA, ss:

IN UNITED STATES DISTRICT COURT

WRIT OF ERROR

The President of the United States of America to the Judges of the District Court of the United States for the Eastern District of New York, Greetings:

Because in the record and proceedings, as also in the verdict of the jury and the sentence imposed and judgment entered thereon before you or some of you between Thomas Agnello, Frank Agnello, Stephen Alba, Antonio Canterino and James Pace, plaintiffs-in-error, and the United States, defendant-in-error, a manifest error hath happened to the great damage of the said Thomas Agnello, et al., as it is said and appears by the complaint; I being willing that such error, if any hath been, should be duly corrected, and full and speedy justice be done to the party aforesaid in this behalf, do command, you, that judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States Circuit Court of Appeals for the Second Circuit, at the Court Room of said Court, in the Post Office Building, in the City of New York, together with this Writ so that you have the same at the said place, before the judges aforesaid, on the 22nd day of April 1922; that the records and proceedings aforesaid being inspected, and said judges of the Circuit Court of Appeals may cause further [fol. 2] to be done therein, to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness, Hon. William Howard Taft, Chief Justice of the United States, this 23rd day of March, 1922, in the year of our Lord one thousand nine hundred and twenty-two.

Percy G. B. Gilkes, Clerk of the District Court, Eastern District of New York, by J. G. Cochran, Deputy Clerk.

The foregoing writ is hereby allowed.

Dated March 23, 1922.

Thomas I. Chatfield, U. S. D. J., holding the Court.

[fol. 3] UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

against

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA, ANTONIO
CANTERINO, and JAMES PACE, Defendants

PETITION FOR WRIT OF ERROR

To the Honorable Judges of the Circuit Court of Appeals for the
Second Circuit, in and for the Eastern District of New York:

1. The Petition of Thomas Agnello, Frank Agnello, Stephen Alba, Antonio Canterino and James Pace respectfully show:

First. That by a verdict of guilty rendered on the 21st day of March, 1922, after a trial before the Hon. Edwin L. Garvin and a jury the said Thomas Agnello, Frank Agnello, Stephen Alba, Antonio Canterino and James Pace were sentenced by the said Hon. Edwin L. Garvin on the 21st day of March, 1922, to be imprisoned for a term of two years, at Atlanta Penitentiary, and to pay a fine to five thousand dollars.

Second. That said conviction was had upon the trial of an indictment charging the defendants with conspiracy in that they did agree to sell certain narcotics consisting of cocaine and heroin.

Third. That after said conviction and sentence the defendants applied for a stay of execution of sentence so that they might be kept out on bail, and makes this application for a Writ of Error and [fol. 4] allowance of the appeal and that they be granted time in which to prepare a case and exceptions and assignments of error, for the purpose of appealing to the United States Circuit Court of Appeals for the Second Circuit on the ground that said conviction was contrary to law, contrary to the evidence and against the weight of evidence, and upon the exceptions taken during the trial and upon the assignments of error.

Fourth. That exceptions were duly taken to the introduction of evidence over the objection of defendant and to the denial of the motion to dismiss the indictment and to the denial of the motion to set aside the verdict of the jury.

Fifth. That there were other errors, as will appear in the record and minutes of the trial herein duly noted by exception or otherwise.

Wherefore, your petitioners feeling aggrieved by said conviction and sentence appeals to the Circuit Court of Appeals of the United States, Second Circuit, and prays that this appeal may be allowed, and that the transcript of so much of the trial as is necessary to pre-

sent the exceptions of errors, together with the orders and procedures thereunder, may be transmitted to the Circuit Court of Appeals for review thereof, and that the term of the Court be extended.

Dated, Brooklyn, N. Y., March 23, 1922.

Thomas Agnello, Frank Agnello, Stephen Alba, Antonio Canterino, James Pace, Plaintiffs-in-Error, by Abraham H. Kesselman, Attorney for Plaintiffs-in-Error. Office and P. O. Address, 215 Montague Street, Brooklyn, N. Y.

[fol. 5] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING WRIT OF ERROR AND PERMITTING PLAINTIFFS-
IN-ERROR TO FILE AMENDED ASSIGNMENTS OF ERROR

Upon the motion of Abraham H. Kesselman, attorney for the plaintiffs-in-error, and upon filing a petition for a Writ of Error, it is

Ordered, that a Writ of Error, be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals, for the Second Circuit, the judgment heretofore entered herein, and it is further

Ordered, that the March term of this Court be extended ninety (90) days from March 21, 1922, for the purpose of permitting the plaintiffs-in-error to file amended assignments of error and to perfect and file their bill of exception and the appeal herein.

Thomas I. Chatfield, U. S. D. J.

[fol. 6] IN UNITED STATES DISTRICT COURT

INDICTMENT

At a stated term of the District Court of the United States of America for the Eastern District of New York begun and held in the Borough of Brooklyn, city of New York, within and for the district aforesaid, on the 16th day of January, in the year of our Lord one thousand nine hundred and twenty-two, and continued by a adjournment to and including the 20th day of January, in the year of our Lord one thousand nine hundred and twenty-two

EASTERN DISTRICT OF NEW YORK, ss:

The Grand Jurors of the United States of America, within and for the district aforesaid, on their oaths present that Frank Agnello, Thomas Agnello, James Pace, Stephen Alba and Antonio Centorino, hereinafter called the defendants, on or about and between the 10th day of January, 1922, and the 16th day of January, 1922, at the

Borough of Brooklyn, County of Kings, City, State and Eastern District of New York and within the jurisdiction of this Court, did knowingly, unlawfully and wilfully conspire, combine, confederate and agree together and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the [fol. 7] United States to wit: to violate the Act of December 17, 1914, as amended by Sections 1006, 1007 and 1008 of the Revenue Act of 1918, commonly known as the Harrison Act; that is to say that the above named defendants, at the time and place aforementioned, did knowingly, unlawfully and wilfully conspire, combine, confederate and agree together and with divers other persons whose names are to the Grand Jurors unknown to sell a large quantity of heroin, which is a derivative of opium, and cocaine, which is a derivative of cocoa leaves, without having first registered with the Collector of Internal Revenue of this district, their names and style, place of business and the place where said business is to be carried on, and without having paid the special tax prescribed by law, in violation of the United States Criminal Code, Section 37, and the Harrison Act as above set forth, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States in such case made and provided.

And the said defendants and each of them in furtherance of the said conspiracy and for the purpose of effecting the object of same did commit the following.

Overt Acts

1. That during the continuance of the said conspiracy and for the purpose of effecting the object of same the said defendants and each of them had in their possession a large quantity of heroin and cocaine as above stated.

2. That during the continuance of the said conspiracy and for the purpose of effecting the object of same the said defendants and [fol. 8] each of them solicited the sale of the said heroin and cocaine and made arrangements to sell same.

3. That during the continuance of the said conspiracy and for the purpose of effecting the object of same the said defendants and each of them met in the home of Stephen Alba at 138 Union Street in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and made arrangements for the purpose of selling said cocaine and heroin.

4. That during the continuance of the said conspiracy and for the purpose of effecting the object of same the said defendants and each of them brought a large quantity of heroin and cocaine at 138 Union Street, Borough of Brooklyn, City, State and Eastern District of New York, and sold same in violation of the Act of December 17, 1914, commonly known as the Harrison Act.

Grand Jurors

And the Grand Jurors aforesaid in their order aforesaid do further present that Frank Agnello, Thomas Agnello, James Pace, Stephen Alba and Antonio Centorino, hereinafter called the defendants, on or about the 10th day of January, 1922, did unlawfully, knowingly and wilfully sell a large quantity of heroin, which is a derivative of opium, and cocaine which is a derivative of natural heroin, without having first registered their names with the Collector of the Internal (fol. 9) Revenue of those districts, their names and style, place of business and the place where said business was to be carried on and without paying the special tax therefor prescribed by law, in violation of the Act of December 17, 1914, as amended by Sections 1000, 1007 and 1008 of the Revenue Act of 1916 commonly known as the Harrison Act.

Against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States in such case made and provided.

Ralph C. Greene, U. S. Attorney for the Eastern District of
New York

IN UNITED STATES DISTRICT COURT

ENDORSEMENTS

- Jan. 20/22. Before Chatfield, J. Defts. arraigned, plea not guilty; bail fixed at \$10,000 as to defts. Thomas Agnello & Pace, bail as to defts. Frank Agnello, Alba and Centorino at \$5,000. Defts. ordered to remain Feb. 1/22.
- Jan. 21/22. Recognizance for F. & T. Agnello & Alba filed.
- Feb. 1/22. Before Howe, J. Defts. present ordered to remain Mar. 1/22.
- Mar. 1/22. Before Garvin, J. Defts. present ordered to remain Mar. 6/22.
- Mar. 6/22. Before Garvin, J. Defts. present except Alba. Defendants noted.
Bench warrant ordered. Case adjd. to 2 p. m.
Order for Bench Warrant entered. Bench warrant issued.
- [fol. 10] 2 p. m. Before Garvin, J. Deft. Alba not present.
Marshal reported that deft. Alba is sick in bed.
Case adjd. to Mar. 13/22.
- Mar. 13/22. Before Garvin, J. Defts. present trial ordered & adjd. to Mar. 14/22.
- Mar. 14/22. Before Garvin, J. Defts. present trial resumed & adjd. to Mar. 15/22.
- Mar. 15/22. Before Garvin, J. Defts. present trial resumed & adjd. to Mar. 16/22.
- Mar. 16/22. Before Garvin, J. Defts. present trial resumed & adjd. to Mar. 17/22.

- Mar. 17/22. Before Garvin, J. Defts. present trial resumed & adjd. to Mar. 20/22.
 Mar. 20/22. Before Garvin, J. Defts. present trial resumed & adjd. to Mar. 21/22.
 Mar. 21/22. Before Garvin, J. Defts. present trial resumed & concluded.

Second count of indictment dismissed on motion of Mr. Wackerman, Attorney for Defendants Frank Agnello and Pace, Jury rendered a verdict of guilty as to 1st count. Court sentenced each deft. for two years imprisonment at Federal Penitentiary and to pay a fine of \$5,000 and stand committed.

Writs of commitments issued (5)

- Mar. 24/22. Petition for Writ of Error, assignment of Error, Writ filed Citation issued and filed. Order staying execution and fixing bail filed and entered. Recognizance for Thomas Agnello & Alba filed.
 Mar. 25/22. Recognizance for Pace filed.
 May 3/22. Before Chatfield, J. Defts. present ordered to return Oct. 4/22
 June 7/22. By Garvin, J. Order extending term to Oct. 4/22 filed and entered. Consent filed.

[fol. 11] EASTERN DISTRICT OF NEW YORK, ss:

I, Percy G. B. Gilkes, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the foregoing is a true copy of an original indictment on file and remaining of record in my office.

In testimony whereof, I have caused the Seal of said Court to be hereunto affixed, at the Borough of Brooklyn, in the Eastern District of New York, this 29th day of June in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States the one hundred and forty-sixth.

Percy G. B. Gilkes, Clerk, by John W. Leavens, Deputy Clerk. (Seal.)

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

Bill of Exceptions

Brooklyn, N. Y., March 13, 1922.

Appearances: Peter J. Brancato, Esq., Assistant District Attorney, for United States; David F. Price, Esq., for Defendant Centorino; A. H. Kesselman, Esq., for Defendants Thomas Agnello and James

Pace, J. H. Wackerman, Esq., for Defendants Frank Agnello and Stephen Alba.

Jury examined by counsel for the United States, and declared satisfactory.

Mr. Price, counsel for defendant, Centorino, examined jury.

The Court: How many peremptory challenges have been exercised by the defendants?

The Clerk: Five.

The Court: Altogether, you may have ten.

Mr. Price: I understood each of the defendants had ten.

The Court: You are wrong.

[fol. 13] Mr. Price: I will have to abide by your Honor's decision.

The Court: We have been over that very carefully.

Mr. Kesselman, counsel for the defendants, Thomas Agnello and James Pace, examines jury and exercised two peremptory challenges.

Mr. Price, exercised two further peremptory challenges.

The Court: You may have ten challenges for all the defendants.

Mr. Price: If your Honor makes that ruling, in the interest of my clients, I except to the ruling, so if I wanted to challenge more I could.

The Court: You can have only ten in all.

Mr. Price: At this time I want to ask you (District Attorney) for the names of your witnesses, so I may ask the jurors if they know any of the men involved.

Mr. Brancato: At this time, I cannot give you the names of my witnesses, because I do not know how many I am going to use. You have no right to ask for the names of my witnesses.

Mr. Price: I ask your Honor to instruct the District Attorney to let me have the names of his witnesses so I may ask each of the jurors whether the witnesses who are to be called by the Government are known by them.

The Court: Motion denied.

Mr. Price: I except.

Mr. Kesselman challenged another jurymen.

The Clerk: That makes ten challenges.

Mr. Wackerman, counsel for defendants, Frank Agnello and Stephen Alba, examined jury.

(Jury satisfactory to all of the defendants' attorneys.)

[fol. 14] The Court: Now, the Court understands that the only challenge for cause exercised in behalf of any of the defendants, was that challenge made to the juror who was sitting as jurymen number 2, concerning whom there was some question as to whether he would follow the instructions of the Court?

Mr. Price: That is correct.

The Court: Have the defendants exercised all of their peremptory challenges?

Mr. Kesselman: Within your Honor's limitation that the combined number of those is ten, within that, we have exercised ten.

The Court: Bearing in mind that there has been only one challenge for cause. Let that appear clearly on the record.

Mr. Price: Ten peremptory challenges.

The Court: Yes.

Mr. Price: I desire to exercise another peremptory challenge.

The Court: Motion denied.

Mr. Price: Exception.

Mr. Kesselman: Exception.

Mr. Wackerman: Exception.

The Court: The Court is of the opinion that the record shows nine peremptory challenges and one challenge for cause, but if counsel desire to have it understood that there have been ten peremptory challenges exercised, then the trial will proceed. You still have one peremptory challenge, according to the Clerk.

Mr. Kesselman: We will challenge juror number five.

(Juryman number 5 was examined by Government counsel and by Mr. Price.)

Mr. Price: In order that the record may be clear, the defendants [fol. 15] at this time desire to exercise another peremptory challenge. I understand that under your Honor's ruling we have already exhausted our number to the extent of ten.

The Court: Yes.

Mr. Price: Your Honor will give us an exception?

The Court: Does the Government desire to be heard on that motion?

Mr. Brancato: I do not think that the defendants have a right, because of the fact that the five are being tried together.

The Court: That is the understanding of the Court, and unless it is desired to submit authorities on this matter, the Court will deny the motion, and will rule that all of the defendants together are entitled to ten peremptory challenges on a case of this kind, and not each defendant ten.

Mr. Brancato: That is my understanding of the law too, your Honor.

Mr. Price: Exception to each of the defendants.

The Court: Yes.

(The jury is sworn, at 11:50 A. M.)

Mr. Price: At this time I ask your Honor to exclude from the court room the witnesses on both sides.

The Court: Motion granted. Everybody that is going to testify in this case must leave the court room and wait in the hall until they are called. If any witness remains in the court room in disobedience to the Court's order, he will be very severely punished, if he attempts to testify.

Mr. Price: There might be some witnesses who talk Italian.

[fol. 16] The Court: I have no Italian interpreter. I have issued my instructions in English. Any witnesses, Italian or American, who disobey these orders, will be severely punished. You gentlemen

know who they are here; why do you not tell them to leave the court room?

Mr. Price: I consent to the chemist staying in. I am perfectly willing to have him here.

The Court: Do you want him here or to go out?

Mr. Price: Let him stay in. An exception is made in the case of the Government Chemist.

The Court: This is by consent of counsel. Proceed.

(Counsel for the United States in his opening to the jury made the following statement:)

"I am going to show you that on January 14th, on Saturday afternoon, a man by the name of Napolitano, an Italian, went to the house of Alba, who is the old man in back of these defendants, at 138 Union Street——"

Mr. Price: I object to anything that happened on the 14th, on the ground that the indictment charges between the 16th and 20th.

The Court: Yes, you have to confine yourself to the dates of the indictment. You make charge of the commission of a crime on a certain date.

Mr. Brancato: On the 16th.

The Court: The first date of the indictment.

Mr. Brancato: Yes, that is the date that the actual sale was made. I am leading up to it.

The Court: You cannot go outside of that. The crime did not begin until the first date in the indictment.

(Later in counsel for the United States' opening, he made the following statement:)

[fol. 17] "Of course, what happened there will be of course best described to you, the scene that took place; the officers will tell you they searched the men and on the person of one man——"

Mr. Price: I object to that, as to what they found.

The Court: Yes. Objection sustained.

(The opening to the jury was concluded by the attorney for the United States.)

The Court: Before we start taking testimony, everybody in this court room who understands English, please stand up. Everybody in the court room understanding English will now understand that all the witnesses in this case who are to testify, must go out into the hall. If anybody remains here, now, and attempts to testify after the Court has stated this, he will be severely punished when he comes up to testify.

Mr. Brancato: I think the statement made by counsel before is erroneous. The indictment states that between the 10th day of January and the 16th day of January, 1922——

The Court: Is that correct?

Mr. Brancato: At least the copy I have so states. The clerk has the original.

The Clerk: The 10th day of January.

The Court: You can go back to the 10th day of January, and make any statement that you say you are going to prove.

(Counsel for the Government made a further opening to the jury.)

[fol. 18] PASQUALE NAPOLITANO, called as a witness on behalf of the United States, being first duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. Now, Mr. Napolitano, I want you to speak very loud and very slowly?

A. Yes, sir.

Q. How old are you?

A. Twenty-five years.

Q. On or about the 14th day of January, Saturday, did you see the defendant Alba?

A. Yes, sir.

Q. Which one of the five is Alba? point him out?

A. That is the old man, the last one. (Indicating.)

Mr. Brancato: The old man. Stand up, please.

(One of the defendants stands up.)

By Mr. Brancato:

Q. Is that the man you mean?

A. Yes, sir.

Q. About what time of the day was it when you first saw him?

A. It was about two o'clock.

Mr. Price: Speak up so I can hear you, please.

The Witness: About two o'clock.

By the Court:

Q. In the day time or night time?

A. In the day time.

By Mr. Brancato:

Q. Where did you see him?

A. I went to his home at No. 138 Union Street.

Q. On what floor was that?

A. The first floor.

Q. Is that one flight up or is it on the ground floor?

A. The ground floor.

[fol. 19] By the Court:

Q. Is Union Street in Brooklyn here?

A. Yes, sir.

Q. In Long Island?

A. Yes, sir.

By Mr. Brancato:

Q. As you entered 138 Union Street, what side of the house is it, the right hand side or the left hand side as you go in?

A. The right hand side.

Q. Do you remember how many rooms there are in that place where Alba spoke to you?

A. Yes, I think it was about four rooms.

Q. Do any of these rooms face Union Street?

A. Yes, sir.

Q. How many of them?

A. Two rooms.

Q. And is there a window?

A. A window, yes, sir.

Q. Did you go there at 138 Union Street on Saturday afternoon at two o'clock?

A. Two o'clock, yes.

Q. Who did you go there with?

A. With a friend of mine.

Q. Did you talk with Alba?

A. Yes, sir.

Q. Who was there in Alba's house at the time that you spoke to him?

A. There was his wife.

Q. His wife?

A. Yes, sir.

Q. Who else was there?

A. Wife and me, a friend of mine and Mr. Alba.

Q. Just four of you?

A. Yes, sir.

Q. Just tell the Court and jury what was said; what talk you had at that time?

Mr. Price: On behalf of the defendant, Centorino, I object to it as incompetent, irrelevant and immaterial and not binding on this defendant.

[fol. 20] Mr. Brancato: We are charging this man with conspiracy.

The Court: Will you prove that the conspiracy was entered into at the time of this conversation?

Mr. Brancato: I will gradually, if the Court please.

The Court: That is what I mean.

Mr. Brancato: Certainly, I am getting to that.

The Court: All right. Any statement of the conspirators is bind-

ing on the other conspirators only during the period of the conspiracy.

Mr. Brancato: That is all.

Mr. Price: During the period that they participated in the conspiracy, if they did participate.

The Court: Yes.

Mr. Price: I except. Your Honor has overruled the objection.

The Court: Upon the strength of Mr. Brancato, upon the statement made by the United States Attorney, with permission to the defendant whom you represent to move to strike out the testimony in the event that Mr. Brancato is not successful.

Mr. Kesselman: I make the same motion on behalf of the defendants Agnello and Pace.

The Court: The same ruling.

Mr. Kesselman: Exception.

Mr. Wackerman: Will your Honor grant me the same motion and exception.

The Court: Yes.

[fol. 21] By Mr. Brancato:

Q. Tell us now, what talk you had with Albo on the Saturday afternoon.

The Court: Is it A-l-b-o or A-l-b-a?

Mr. Brancato: A-l-b-o.

The Court: Which is it?

The Witness: A-l-b-a.

Mr. Brancato: My calendar shows Albo. I think the indictment is Alba.

A. (Continuing:) It was about a quarter after two. A friend of mine with me introduced me; a friend of mine introduced me to Alba. He said, "This is Napolitano, this is the fellow that wants to buy some narcotics."

Q. This is the fellow that wants to buy some what?

A. Narcotics; some drugs, cocaine, morphine, heroin.

Mr. Wackerman: On behalf of the defendants, I represent I am objecting to his characterization of what narcotics mean.

Mr. Brancato: I cannot understand what he is saying.

The Court: Yes, just tell us what the friend said; just use his words; do not tell us anything else.

Mr. Wackerman: I move to strike out the rest of his testimony.

The Court: Motion granted. Begin again and tell what was said.

A. (Continuing:) My friend said, "He is all right, a friend of mine, meet Mr. Alba. Mr. Napolitano, shake hands with Mr. Alba." He said, "He is the fellow, he is this fellow, Patsy Napolitano." He says, "If you want to buy some narcotics——"

[fol. 22] Q. Narcotics?

A. Yes, sir; he said, "Yes, I will sell this fellow." He said,

"Do you know this fellow?" He said, "Yes, I know him about one year."

Q. Who said that?

A. Mr. Alba asked my friend if he knows this man, me. He said, "I know him about one year." He said, "All right, have you any business with him?" He said, "Any time that you want, you can do business with him. He is a good man." He said, "All right, but," he said, "I am sorry that I have no stuff at this time."

Q. "I am sorry I have no stuff just now?"

A. "I am sorry I have no stuff just now." He will back tonight between seven and eight o'clock and he will get a little sample.

Q. What else was said?

A. He said, "Are you sure tonight?" Just walk around---

Q. What is that?

The Court: If you gentlemen are familiar with this dialect, I wish you would repeat it in clear English.

Mr. Kesselman: Unfortunately, I am sorry I cannot help the court and jury out.

The Court: We can get an interpreter.

Mr. Kesselman: I am agreeable.

Mr. Brancato: All right.

The Court: How about Mr. Tucci, who is in the building all the time?

Mr. Price: Yes, that is agreeable.

By Mr. Brancato:

Q. When you were talking with Mr. Alba, in what language were you speaking with him?

A. Italian.

Q. Are you an Italian?

A. Yes, sir.

[fol. 23] Q. Is he an Italian?

A. Yes, sir.

(A. O. Tucci, is sworn to act as an interpreter.)

Q. Now, will you say, Mr. Witness, from the very beginning, when you went to Mr. Alba's house, when you had a talk there, tell us just what took place on Saturday afternoon?

A. A friend of mine took me over to this place Saturday at No. 138 Union Street, at Alba's house.

Q. Alba?

A. Alba. He introduced him to a friend of his and said, "If you want to buy some morphine and cocaine" and he said that just at that time he did not have any on hand, to come back at about seven or eight o'clock in the evening and he would have the sample there. Then he said to my friend, "Is he all right? Is he a good fellow? Can we do business? Otherwise we do not want to go around like this." "Yes" my friend said, "Yes, he is all right. I know him myself." Then he said, "All right. Very well, come back about

seven or eight o'clock and I will give you a sample and then we will set the price and everything."

Q. Now, was that the substance of the conversation that you had with Alba on Saturday afternoon at two o'clock?

A. Yes, sir.

Q. Then did you go away?

A. Yes, sir; I went away and I went to the office over in New York.

Q. What office did you go to?

A. At the Post Office, New York, 516, the old Post Office Building, Park Row.

Q. And whose office is that?

A. The Revenue Officers that have charge of the Narcotic Division.

Q. The Narcotic Division?

A. Yes, sir.

Q. Then did you go back after seven o'clock to see Mr. Alba?

A. Yes, sir.

[fol. 24] Q. Was it the same place that you saw him.

A. Yes, sir; the same place.

Q. Who went with you?

A. I and my friend, the same one that was there before.

Q. When you went over there to 138 Union Street, to Alba's house at seven o'clock at night, did you leave any of the Narcotic Agents outside?

Mr. Price: I object to that question on the ground that it is leading.

The Court: Objection sustained.

By Mr. Brancato:

Q. Who went over with you?

A. Mr. Mellon.

Q. Manning?

A. Manning and Mr. Pacetta.

Q. Pacetta?

A. Yes, sir; and Ray Connolly and Mellon. Four men.

Q. Was your friend with you?

A. Yes, sir.

Q. Now, did you see Mr. Alba at seven o'clock that night?

A. It was not exactly at seven o'clock, between seven and eight, yes, when we went over there I did see him.

Q. Was it in his house?

A. Yes, sir.

Q. Is that the same place where you had seen him at two o'clock?

A. Yes.

By the Court:

Q. Who went into his house with you?

A. The friend of mine.

Q. What happened to the agents that went with you?

A. They were at the corner.

By Mr. Brancato:

Q. You left them at the corner and you went into Alba's house; is that right? With your friend?

A. Yes, sir.

[fol. 25] Q. Now, then, when you got into Alba's house at between seven and eight o'clock on Saturday night, who was there?

A. He and his wife.

Q. And your friend went in, is that right?

A. Yes, sir.

Q. What was said when you went in and who said it?

Mr. Wackerman: At this time, do I understand that the formal objection made by Mr. Price at the beginning of this testimony still applies?

The Court: I do not understand that it does. You can make it and it will apply.

Mr. Price: I understood your Honor's ruling that all this evidence as to what happened in the absence of the other defendants was subject to a motion to strike out.

The Court: One objection is good, you know, throughout the whole trial.

Mr. Price: I know, but—

The Court: Very well, the court will now rule that if the District Attorney states that he will include the entire conspiracy—

Mr. Brancato: That is it.

The Court: As having begun before this testimony, before the incidents covered by this testimony, the witness may give his evidence, and if the District Attorney does not prove the conspiracy had begun at that time, or offer evidence tending to show that it had begun at that time, then the defendants, or any of *him* may move to have it stricken from the record and it may be stricken out.

Mr. Wackerman: May we have an exception.

The Court: Yes.

[fol. 26] Mr. Brancato: We won't be technical, as far as the Government's side is concerned. One objection was taken in the beginning and I submit that that will be sufficient throughout the case.

The Court: Very well.

Mr. Price: That is my understanding.

(The last question was repeated by the reporter.)

A. We went in there and shook hands; he shook hands with us. He said, "My friend has just left. If you had got here about five minutes before this time, you would have caught him here. He went over to eat."

Q. Did he say, "My friend just left here" or "My something else?"

A. Yes, his friend.

Q. Did he say what his friend's name was?

Mr. Wackerman: That is objected to.

The Court: Objection overruled.

Mr. Wackerman: Exception.

A. Santolino.

Q. No, Centorino.

A. That is it.

Q. He said his friend had just left. What else did he say, if anything?

A. "Well, I have the sample here anyway and I will go and get my friend. All of us can have a talk together."

Q. Did he go out and get his friend?

Mr. Price: I object to that on the ground that it is leading and calls for a conclusion.

The Court: Yes. He only asked him if he left the place, though.

By Mr. Brancato:

Q. Did he go out at that time?

A. Yes, sir.

Q. Did he come back?

A. Yes, sir.

[fol. 27] Q. After he came back—how long was he out?

A. Between seven and ten minutes.

Q. After he came back, was anybody with him?

A. Yes, his friend.

Q. Is his friend in court today?

A. Yes, sir.

Q. Who is he?

A. The first fellow (indicating).

Mr. Brancato: The first fellow. Stand up.

(One of the defendants stands up.)

By Mr. Brancato:

Q. That man?

A. Yes, sir.

Q. That is Centorino?

A. Yes, sir.

Q. After Centorino came into the house with Alba, did you have a talk with him?

A. Yes, sir; we did.

Q. What was said; what did they say?

A. When talking together he said, "Well, the smallest amount I can sell is a kilo of each."

By Mr. Price:

Q. Who said that?

By Mr. Brancato:

Q. Who said that?

A. Alba and Centorino.

Q. What did he say?

A. A kilo of each. It would be \$19 for the cocaine and \$19.50 for the heroin.

Q. What did you say?

A. I had \$350 in my pocket, which had been given to me by the officers. It was marked.

Mr. Price: I object to that and ask that it be stricken out.

Objection sustained. Motion granted.

By Mr. Brancato:

Q. What did you say after they had told you the price of the cocaine and the heroin?

[fol. 28] A. I asked him if they would sell it to me a little bit cheaper than that. I would like to buy about three hundred and fifty dollars worth.

Q. What did they say?

A. No, they said they would not sell less than two kilos.

By the Court:

Q. How much was it a kilo?

A. About thirty-six ounces.

Q. How much would the thirty-six ounces cost?

A. Cost about seven hundred dollars.

Q. One kilo?

A. One kilo.

By Mr. Brancato:

Q. Were you shown any sample of the cocaine?

Mr. Price: I object to that on the ground that it is leading.

The Court: Objection sustained.

Mr. Wackerman: I object to it on the ground that it is incompetent under the indictment.

Mr. Brancato: The objection is sustained; what is the use of further objection?

Mr. Wackerman: I want to just get in another objection.

The Court: Of course it is not, it cannot be in, it is excluded.

Mr. Wackerman: All right. I will only have to get up again.

The Court: If it comes up again you can have a ruling on the objection.

By Mr. Brancato:

Q. At the time that you had the conversation with Centorino and Alba, about the price of this cocaine and heroin, was anything shown to you?

A. Two samples; a sample of each.

[fol. 29] Mr. Kesselman: I move to strike out the answer. The question calls for yes or no.

The Court: Motion granted.

Mr. Kesselman: I move to strike out everything after the word "Yes."

The Court: Motion granted.

Mr. Brancato: The word "yes?"

Q. You say that something was shown to you, is that right?

A. Yes.

Q. Who showed it to you?

A. Alba.

Q. What did he show to you?

A. Two small packages of papers.

Q. Did you open these two small packages of papers?

A. Yes, sir.

Q. What was inside of these packages?

A. There was one little—one package; there was a little bit of heroin and the other one cocaine.

Mr. Price: I move to strike out the answer.

The Court: Motion granted.

Mr. Brancato: I consent to striking out the word "heroin."

By Mr. Brancato:

Q. It was powder, was it?

A. Yes, sir; powder.

Q. White powder inside the package?

A. Yes, sir.

Q. Did you have any other conversation at seven or eight o'clock with any of—with these defendants, Centorino and Alba?

A. Yes, we did, because he did not want to sell it to me. I told him I would return on Monday.

Q. You say that he did not want to sell it; just what do you mean?

A. He refused to sell me \$350 worth. Then I told him that I would return on Monday and would purchase two kilos.

[fol. 30] Q. You say that he refused to sell you \$350 worth; did he want to sell you more than that?

Mr. Price: I submit that he has already testified that they told him that they would not sell him anything less than two kilos. I object to the question on the ground that it has already been answered.

Mr. Brancato: On that statement of counsel I withdraw my question.

The Court: Objection sustained.

By Mr. Brancato:

Q. Did you go away then?

A. Yes, sir, we did.

Q. What did you do with the two packages of white powder that you received at eight o'clock or about eight o'clock Saturday night?

A. I turned them over to Officer Pacetta.

Q. Where was that?

A. On the next corner.

Q. When you went to the next corner, whom did you meet?

A. Mr. Manning, Pacetta, Mellon, Ray Connolly.

Q. Were they all together?

A. No, they were—one in one place, one in another. They were scattered.

Q. When you got to the corner did they come up to you?

A. Yes, sir; I walked ahead and they came right after me.

Q. Then you turned the packages over to the agents; is that right?

A. Yes, sir.

Q. Now, did you sign anything, your name, on the packages which you received that night?

A. Yes, sir.

Q. When did you sign that?

A. On the following morning, signed them at the office.

Q. When you say "the office," what office do you mean?

A. In the Narcotic Division.

[fol. 31] Q. Sunday morning, was it?

A. No, Monday morning.

Q. During that time you had given those packages over to the agents, is that right?

A. Yes, sir.

Q. I show you these packages, and ask you if those are the packages that you received from the defendant, Alba, that night?

A. Yes, sir.

Mr. Brancato: I offer them for identification.

The Court: Mark them for identification.

(The packages were marked Government's Exhibits 1 and 2 for identification.)

Q. Do you see a name on them?

A. Yes, sir.

Q. Did you again go to Alba's house the third time?

A. Yes, sir; on Monday.

Q. What time about Monday?

A. At the same time, between seven and eight.

Q. Before you went to Alba's house between seven and eight, where had you been?

Mr. Price: I object to that as incompetent, irrelevant and immaterial.

The Court: I do not think it is material. It does not make any difference where he had been before that. Sustained.

By Mr. Brancato:

Q. Did you again go direct to Alba's house—I withdraw the last question. What time was it that you went to Alba's house?

A. Between half past seven and eight o'clock.

Q. Who was in there at the time?

A. I and seven or eight more with me.

Q. Who went into the house, in Alba's house?

A. I found the husband and wife there.

[fol. 32] By the Court:

Q. This was on Monday?

A. Yes, sir.

By Mr. Brancato:

Q. You say the husband and wife. Do you mean Alba and his wife?

A. Alba and his wife.

Q. What was said when you went in there Monday night; what talk did you have?

A. He asked me, he said, "Did you bring the money to buy the good stuff?" I said, "Yes, I have."

Q. What else was said?

A. "Well," he said, "all right, if you have the money, why you can do business."

Q. Go on and tell us all about it; what happened?

A. He said, "But my friend went out. I am going to get him right away. I will bring him back."

Q. Did he go out?

A. Yes, sir; both of them come back.

Q. Both who? Whom do you mean by "both?" Alba?

A. Alba and the first one. (Indicating.)

Q. Centorino?

A. Yes, sir. They said, "All right, if you have seven hundred dollars with you you can buy a kilo."

Q. Go on.

A. I said, "Oh, no, I will not give the money up until I see, until I get the goods."

Q. Yes, go on.

A. He said, "What is the matter with you? Are you afraid of me? If you are afraid, come along with me." I said, "No, I will not go with you. I have money in my pocket and I am not going any place. I am afraid to go out with you."

Q. Did you show him the money?

A. Yes, sir.

Q. Then what?

A. Then I said, "All right; if you do not want to sell it, you do not have to. I will go and buy it some place else." And we all went out.

[fol. 33] Q. You say that "We all went out." Who went out?

A. I, my partner, Alba and Centorino.

Q. Where did you go?

Mr. Price: Wait a minute. I did not get that answer.

(The last answer was repeated by the reporter.)

By Mr. Brancato:

Q. When you say your "partner" do you mean your friend who went there with you before?

A. Yes, sir; he was there three times.

Q. You say that "We went out." Who went out?

A. The four of us.

Q. Where did you go to?

A. We went out, we were about ten feet away from his house, from the door——

Q. Whose house?

A. Alba's house.

Q. That is, about ten feet away from 138 Union Street, is that right?

A. Yes, sir.

Q. Were you out in the street or on the sidewalk or where?

A. Yes, on the sidewalk.

Q. How near were you to the street, to the gutter?

A. About a pace.

Q. Now, how far apart or near were you to each other, the four of you?

A. Very close.

Q. You were close together, were you?

A. Yes, sir.

Q. What were you doing there on the sidewalk?

A. I said, "If you want to sell your stuff, all right; if you do not want to sell it, I will go and buy it somewhere else."

Q. What did they say?

A. They said, "All right; if you are afraid, come back with me in my house."

[fol. 34] Q. Who said that?

A. Alba. We went into the house and Centorino went out and got the stuff.

Mr. Price: I move to strike out the answer, "He got the stuff."

The Court: Motion granted.

Mr. Brancato: All right.

By Mr. Brancato:

Q. You say that you and Alba returned to the house?

A. And my friend was with me also.

Q. What did Centorino do?

A. I do not know where he went, but he went out and got the stuff.

Mr. Price: I move to strike that out.

Mr. Brancato: I consent to the striking out of "He went out and got the stuff."

The Court: Motion granted.

By Mr. Brancato:

Q. He went away; is that right?

A. Yes.

Q. He did not go back to the house with you and Alba?

A. No, sir.

Q. Then you went back into the house with Alba and your friend?

A. Yes.

Q. When you got back to the house with Alba and your friend, what were you doing there?

A. We sat down there.

Q. Any talking going on; anything said?

A. Oh, yes, we got to talking and I asked him how long he was doing that kind of business, and he said, "Seven or eight years, probably five years."

Q. Now, did anybody come back after you got into the house?

A. Yes, sir.

Q. Who came in?

A. Centorino and three or four more.

Q. Three or four, how many?

A. Three more.

[fol. 35] Q. Who are they?

A. I believe it is them over there; I saw them once.

Q. When you say "them over there," do you mean those defendants?

A. The man with eye glasses and the other two last fellows over there.

Q. Pace and the Agnello brothers?

The Court: Indicating the defendant Pace and the defendants Angello.

By Mr. Brancato:

Q. Just describe what took place at the time that Centorino and the other three defendants you have just named, came to the door of that 138 Union Street, what took place?

A. They knocked at the door; Alba opened the door. They came inside and went into the next room, to the kitchen. Alba closed the door and he put a lock in the back of it. Then they came near us and said, "Here is the stuff, we have it."

Q. Who came near?

A. Centorino was the one that addressed me first. The other three were together.

Q. Yes, go on.

A. And he took me and said, "Come on inside and I will show you the stuff?"

By Mr. Kesselman:

Q. Who?

A. Alba and Centorino, both. I went inside; I saw about three or four packages of one hundred grains each.

Mr. Price: I move to strike out the answer.

Mr. Brancato: I consent.

The Court: Strike out "One hundred grains each."

Mr. Brancato: Yes.

[fol. 36] By Mr. Brancato:

Q. Did you go into the next room?

A. Yes, sir.

Q. When you got into the next room, who was in there?

A. The five that are sitting there.

Q. Were they standing up or seated, which?

A. Some of them were sitting down, some were standing up.

Q. Who spoke to you first in that room?

Mr. Price: He has already answered, Centorino. I object to that question.

The Court: Objection overruled.

Mr. Price: I except.

A. Centorino.

By Mr. Brancato:

Q. What did he say?

A. They showed me the stuff and he said, "This is the stuff; see if you like it."

Q. At the time that he showed you the stuff, did you see who gave it to Centorino, if anybody?

A. I do not know about that, but when I went inside, all I noticed——

Mr. Kesselman: I object to the last part of the answer. He said, "I don't know."

The Court: Only state what you saw. Put that to the witness, Mr. Tucci, only state what you saw.

A. On the table Centorino showed me the stuff.

By Mr. Brancato:

Q. On the table?

A. Yes, sir.

Q. Who put it on the table?

Mr. Price: If he knows.

[fol. 37] A. I did not see; I was in the next room.

Q. Tell us what was said about those three or four packages that were on the table?

A. I looked at the stuff and I said, "All right, I like the stuff. Have you any more of it?" And they said, "Yes, give me the money. I have got to have the money."

Q. Who was talking at this time?

A. Centorino and Alba.

Q Tell us the conversation.

By the Court:

Q. Where were the other three defendants?

A. They were there also.

Q. In the same room where those packages were?

A. Yes, sir.

By Mr. Brancato:

Q. Go on.

A. I said, "All right, here is the money." So I took the roll of bills and I said, "Count it if you like. The money is there."

Q. Go on.

A. And then Alba took the money; took the \$350 and put it in his back pocket, and at the same time the officers came in through the door and they got hold of them.

Q. How many packages were found on that table at the time the police came in?

A. I think there were four.

Q. Four at the time the police came in?

A. Yes, sir.

Q. Were any packages found on the persons of any of the other defendants?

Mr. Price: I object on the ground that it is leading. Let him state what happened.

The Court: Objection sustained.

[fol. 38] By Mr. Brancato:

Q. Was anybody searched?

A. Yes, sir. They all—they were all searched.

Q. They were all searched?

A. They were all searched.

Q. What was found on their persons?

Mr. Price: I object to anything except it is within the issues of this indictment.

Mr. Brancato: That is the question—

The Court: Knowing what the answer is, you press the question?

Mr. Brancato: If the Court please, I asked him—

The Court: You know what the answer is, I suppose, that this witness will give. You have talked with him?

Mr. Brancato: Knowing that, your Honor—

The Court: Do you press the question?

Mr. Brancato: I asked a leading question before to get a certain answer.

The Court: Do you press the question now?

Mr. Brancato: Yes.

The Court: Objection overruled.

Mr. Price: Exception.

(A conference was had between the Court and counsel.)

By Mr. Brancato:

Q. Do not tell us about that particular thing now. Were there any packages found?

A. Yes, they found some—packages of the same stuff that we had—

Q. (Interrupting.) The same packages?

[fol. 39] Mr. Price: I move to strike out "The same packages."

The Court: The same stuff as what?

Mr. Brancato: We consent to striking it out. We do not know what it is; at least, he does not know what it is.

The Court: Motion granted. Strike it out.

By Mr. Brancato:

Q. Were there any packages found on the persons of any of the defendants which were like those packages that were on the table?

Mr. Wackerman: That is objected to on behalf of the defendant that I represent. He is not charged with possessing anything.

The Court: Objection overruled.

Mr. Wackerman: Exception.

A. Yes, sir.

By Mr. Brancato:

Q. On which of the defendants were there packages found?

A. The one I am sure of, that is the boy there.

The Court: Indicating the defendant Frank Agnello.

By Mr. Brancato:

Q. How many packages were found on him?

A. Three or four.

Q. There were three or four on the table?

A. Yes, sir.

Q. I will show you these packages and ask you if they are the packages which were on the table and also found on the person of the defendant Frank Agnello. Look at them.

[fol. 40] A. (Witness looks at packages.) Four of these packages were on the table. The rest of them were found on the person that I have said.

Q. Did you put your name on any of these packages?

A. Yes, sir.

Q. Is your name on those packages?

A. Yes, sir.

Q. Is your name on all these packages?

A. Yes, sir.

Q. Is your name on this particular package that I now show you?

A. Yes, sir.

Mr. Brancato: I offer them all for identification.

The Court: Mark them for identification.

(The packages are marked Government's Exhibits 3, 4, 5, 6, 7 and 8 for identification.)

By Mr. Brancato:

Q. Now, is there any way by which you can tell which of these packages were found on the table and which were found on the defendant Frank Agnello?

A. No, I could not.

Q. You do not know of any way?

A. No.

Q. When the officers came in—you said before that the officers came in when you paid the money; that is true, isn't it?

A. Yes, sir.

Q. Was Officer Oyler there?

A. Yes, sir.

Q. And Manning?

A. Yes, sir.

Q. And Connolly?

A. Yes, sir.

Q. And Mellon?

A. Yes, sir.

Q. They came in?

A. Yes, sir.

Q. What happened after the officers came in?

A. They ordered them to put their hands up and started to search them.

[fol. 41] Q. You said that you paid the money to Alba? A. Yes, sir.

Q. Was Alba searched after the agents came in? A. Yes, sir.

Q. What did they find on him? A. \$350.

Q. The money that you had given him? A. Yes, sir.

Mr. Price: I move to strike that out on the ground that it is a conclusion.

The Court: Motion granted.

By Mr. Brancato:

Q. Who gave you the money? Who gave you the \$350 that you paid to Alba? A. Ralph Oyler.

Q. He is the agent in charge? A. Yes, sir.

Q. Where did he give you the money? A. At the office.

Q. And when? A. At the time we left there about seven or a quarter after seven.

Q. Monday night? A. Yes, sir.

Q. Just before you went to this No. 138 Union Street, you had been at Ralph Oyler's office in New York; is that right? A. Yes, sir.

Q. That is the money that he gave you? A. Yes, sir.

Q. Do you know if that money was marked? A. Yes, sir.

Q. Was it marked? A. Yes, sir.

Q. How was it marked; who marked it? A. The typewriter.

Q. Typewriter? A. By machine.

Q. How was it marked; just tell us what they did? A. The numbers were taken.

Q. They took the serial numbers from the bills? A. Yes, took the numbers.

[fol. 42] Q. Who did that? A. One who was connected with the office.

Mr. Price: I move to strike out the testimony of the witness that this money was marked on the ground that it appears from his testimony that it was not marked.

The Court: Motion granted.

Mr. Price: And on the further ground I move to strike out that the serial numbers were taken on the ground that this witness must necessarily be testifying from hearsay testimony. It is hearsay as far as he is concerned.

The Court: Well, before ruling on that motion the Court will ask the witness what he saw in connection with the bills. Ask the witness what did he see in connection with the bills when they were given to him?

A. I saw that the numbers were taken from each and every bill before they were handed to me.

The Court: Motion denied.

Mr. Price: I except.

Mr. Brancato: I guess that is all of this witness.

The Court: We will take a recess until two o'clock.

Now, Gentlemen of the jury, we have begun the trial of this action. The Court instructs the jury not to discuss the merits of the prosecution or defense among yourselves, until the case is finally submitted to the jury, either during the luncheon hour or at any other time when we are in recess. If anybody approaches a member [fol. 43] of the jury and attempts to get him into conversation about this case, please report it to the Court as soon as we come together thereafter.

Mr. Brancato: If your Honor please, I will have a few more questions to ask this witness when we come back at two o'clock.

Mr. Price: I consent to it. You may examine him after two o'clock at any length that you want to.

Mr. Brancato: All right.

(A recess was then taken until two o'clock.)

After Recess

2 o'clock p. m.

PASQUALE NAPOLITANO resumes the stand for further examination.

(Through the same Interpreter.)

By Mr. Brancato:

Q. Do you remember the time that you paid the money to Alba when you were getting those packages that are on the table; do you remember that time? A. Yes, sir; I do.

Q. When you went into this room where you paid the money, who was in that room?

Mr. Price: I object to it on the ground that he has already testified.

The Court: Objection overruled.

Mr. Price: Exception.

A. The five of them were there.

[fol. 44] By Mr. Brancato:

Q. And when you went into that room, were the three or four packages which you mentioned this morning, were they on the table?

Mr. Price: I object to that on the ground that it has been all asked and answered.

The Court: Objection overruled.

Mr. Price: I object.

A. Yes, they were on the table.

By Mr. Brancato:

Q. Now, at that time when those three or four packages were on the table, did any of the five men speak to you? A. Alba and Centorino.

Q. What did they say?

Mr. Price: We have been all over it. He has been all over it three times this morning.

Mr. Brancato: I do not think that I have gone over that phase of it.

Mr. Price: Oh, yes, he was speaking about the money.

The Court: There must be an objection, because you are wasting time.

Mr. Price: I object to it on the ground that it has already been asked.

The Court: Objection overruled.

Mr. Price: Exception.

A. Yes, they said the stuff was good, could buy it, and everything was all right.

By Mr. Brancato:

Q. What was Thomas Agnello doing at the time? A. You mean the young one?

Q. No, that one standing up now. A. He was standing up there.

[fol. 45] Q. Standing up where? A. Near the table.

Q. How far from the table was he? A. He was almost close to it.

Q. What was Pace doing, if anything? The man standing up now? A. He was sitting down.

Q. Sitting down where? A. On a chair.

Q. How far was he from the table? A. He was about a pace away from it.

Q. A pace, you mean a foot or two feet? A. (Witness indicates with his arms.)

Mr. Brancato: About four feet?

Mr. Price: About four feet. I guess it was about four feet.

Mr. Brancato: Well, four or five feet.

By Mr. Brancato:

Q. Now, did either one of those two men say anything about the packages on the table or about the whole transaction?

Mr. Price: I object to it on the ground that he has asked it and on the further ground that it is suggestive and leading. Let him tell what happened.

The Court: Yes, he had better just tell what happened. What, if anything, was said?

Q. Well, at that time, that is, after you went into the room, was there anything said by these two men, Pace and Thomas Agnello? A. I do not understand that, because if they did speak they spoke by themselves; I did not hear them.

Q. You did not hear the talking? A. No, I did not.

Q. They did not speak to you? A. No, because then first I was in the kitchen and they were in the other room, so I don't know [fol. 46] whether they said anything or not.

Q. At the time when you were in the kitchen and they were in the other room, that is the time that they all came in, isn't it.

Mr. Price: What do you mean? I object to it; that is indefinite. Who all came in?

Mr. Brancato: Centorino and the other three.

Mr. Price: Reframe your question.

By Mr. Brancato:

Q. When you say that you were in the kitchen and they were in the other room, do you mean at the time that Centorino came in with the other three men? A. Yes, sir.

Q. But at the time that you went into that room where the packages were, were Pace and Thomas Agnello also in that same room?

A. Pace—yes, they were there.

Q. Did they say anything at any time after you were in the room?

Mr. Kesselman: I object to that. He has already answered it three times, that they did not say anything.

The Court: Objection overruled.

Mr. Kesselman: Exception.

A. No, when they got in there, Alba spoke to my partner and then spoke to me; that is all that I know.

By Mr. Brancato:

Q. Now, did you see where the other packages—That question was answered this morning and I will withdraw it.

[fol. 47] Mr. Brancato: That is all.

Cross-examination by Mr. Price:

The Court: This cross examination is by which defendant?

Mr. Price: By Centorino.

The Court: Centorino.

Q. What is your title in the Internal Revenue Bureau?

A. Special Employee in the Narcotic Division.

Q. Is that your correct title?

A. Well, no—when there is work I am titled as such, when there is not, I do other kinds of work.

Q. I did not get the answer.

A. When there is work, I am titled as such, Special Employee of the Narcotic Division. When there is not, I do other kind of work.

Q. You referred here to your "partner." Is he also employed by the Internal Revenue Department, the Narcotic Division?

A. No, sir.

Q. What is his name?

A. Nunzio.

Q. Nunzio what?

A. I do not know his second name.

Q. Where does he live?

A. I don't know.

Q. How long have you known him?

A. Over a year.

Q. How often have you seen him in the last year?

A. Well, I telephoned to him many times; I seen him sometimes once a month, twice a month.

Q. Where did you telephone him to?

A. Must I tell you where I telephone?

Q. Yes. I want to know where did you telephone to him?

A. A cigar store.

Q. What is the telephone number of the cigar store that you called [fol. 48] up when you wanted to talk to the man that you described as your "partner," Nunzio?

A. I had it written on a piece of paper. I guess I lost it. I don't know where I have got it.

Q. So if you want to telephone to him today you don't know where to telephone to, is that correct?

A. No, sir.

Q. Where did you see him when you saw him during this year?

A. I saw him at Brooklyn.

Q. Brooklyn is a big place. Tell these men where you saw him in Brooklyn during this year?

A. I don't remember all that. I don't know where it is.

Q. Can you tell me one place, one date that you saw this man you designate as your "partner" in Brooklyn, during this last year?

A. At 13th Avenue and 59th Street—39th Street.

Q. You saw him at 13th Avenue and 29th Street?

A. 39th Street.

Q. 39th Street, Brooklyn?

A. Yes, sir.

Q. When did you see him at that address?

A. Well, a person cannot remember all that.

Q. Is that your best answer?

A. I do not say that it is my best answer, but I will say that a person cannot recall or remember everything that he has done during the past year.

Q. Did you meet him by appointment at that place?

A. Yes, sir; by appointment.

Q. You called up the cigar store on the telephone and then you met him after talking to him on the telephone, is that correct?

A. No, that was not so. I did not call him at the telephone at that time.

Q. How did you come to meet him there?

A. Just going by there, I saw him, called him and talked to him.

[fol. 49] Q. That is, you were going by 39th Street and 13th Avenue and by chance you met him and started to talk to him?

A. Yes, sir; I saw him and I spoke to him.

Q. Did you ever ask him his business?

A. No, sir.

Q. Do you know what business he is employed in?

A. I don't know.

Q. Did you ever know where he was employed?

A. No, sir.

Q. Did you ever know where he lived?

A. No, sir.

Q. Do you know where he lives now?

A. No, sir.

Q. Do you know where I can locate him so I can subpœna him here as a witness?

Mr. Brancato: If the Court please—

The Witness: The boss might tell you that.

Mr. Brancato: The last part of that question is immaterial, Judge, if counsel is sincere that he wants to subpœna him as a witness, I will produce the man tomorrow.

The Court: Now, on that statement, do you press the question in that form?

Mr. Brancato: Then I object to the form of the question.

The Court: Objection sustained.

By Mr. Price:

Q. Did you ever tell Mr. Brancato the address of this partner of yours?

A. No, sir.

Q. Do you know where you can locate him today?

A. No, sir.

Q. Do you know how you can locate him today?

[fol. 50] A. Oh, yes; if I want to see him very bad, I will go to the boss, and he will tell me. I can get him right away.

Q. That is, your boss knows where he is?

A. Yes, I believe he does, I am not positive.

Q. Your boss sent him out on this case with you, didn't he?

A. Yes.

Q. How many cases has he worked on with you?

A. This particular case he worked with me; that is all.

Q. By your boss, you mean Mr. Ralph Oyler, is that correct?

A. Yes, sir.

Q. Now, was this man Nunzio known under the name of "Andy"?

A. What do I know about that?

Q. Don't you know that down in this house at No. 138 Union Street, he was called by Alba and Centorino, "Andy"?

A. That I could not swear to about that, because the only name I know him by is Nunzio.

Q. You never went to 138 Union Street before the 14th of January, did you?

A. No, sir.

Q. You know Andy was there on the 13th of January, don't you?

Mr. Brancato: I object to the question, there is no evidence that "Andy" was at any place at any time.

Mr. Price: It is cross examination.

Mr. Brancato: I object to it. The man testified that there was no such man as Andy. He said Nunzio was there.

The Court: I think you ought to put the question in such a way that the man that you referred to is Nunzio.

Mr. Price: All right, I will withdraw the question.

[fol. 51] By Mr. Price:

Q. Do you know that Nunzio had visited 138 Union Street, before the 14th day of January, 1922?

A. That I don't know.

Q. Didn't he tell you that he did?

A. No, sir.

Q. You testified, did you not, that you had seen and talked to this man Nunzio, a number of times during the last year?

A. No, sir.

Q. Didn't you testify to that?

A. No, sir.

Q. All right. On the 14th of January you met Nunzio, didn't you?

A. I met him the first time the 5th or 6th of January.

Q. Of this year?

A. Yes, sir.

Q. That is the first time that you ever met him or talked to him?

A. Oh, I saw him last year, but we never had anything to do about any cases of any kind.

Q. I did not ask you that; did you see him within the last year and talk to him?

A. Yes, I did, sure.

Q. You talked with him a number of times in the last year, didn't you?

Mr. Brancato: Just a moment please, if the Court please. I do not want to interrupt the Interpreter, but the question is, "Within the last year." The Interpreter is asking him, "Last year." There is a little difference.

The Court: Within twelve months, going back from now.

A. Yes, I did; when I saw him I did.

By Mr. Price:

Q. So that when you testified here that you did not talk to him [fol. 52] within the last year you were mistaken, weren't you?

A. I didn't understand. I thought that you were referring that we had spoken about any case or this case.

Q. Oh, I see. You are reading my mind. Where did you meet him on the 5th of January of this year?

A. It might have been at the same place. I cannot recall exactly just where I met him. I saw him and spoke to him.

Q. You spoke to him, you told us a minute ago, on the 5th of January, about this case, didn't you?

A. No, sir.

Q. Are you sure about that?

A. Yes, sir.

Mr. Price: Mark that please, Mr. Stenographer.

By Mr. Price:

Q. You are sure about that now?

A. I did not speak about this matter at all.

Q. What was the first day in January of this year that you spoke to Nunzio about this case?

Mr. Brancato: I want to object to that form of the question. The evidence is this, that this man spoke on the 5th of January, not about the case, but spoke to him about that time. The question now is, when was it in January that you spoke to him about this case?

The Court: Yes.

Mr. Brancato: There is no evidence about this case at all.

The Court: Now, he wants to know about this case.

Mr. Price: That is what I asked him.

Mr. Brancato: Then he should ask him, when was the first time that he spoke about this case.

[fol. 53] The Court: That is what I understood. Now, the question is, Mr. Interpreter, that you are to ask the witness what was the first day in January, 1922, that he spoke to Nunzio about this case.

Mr. Brancato: If any.

A. That was on Saturday, on the 14th.

By Mr. Price:

Q. Was that the first day in January, 1922, that you spoke to Nunzio about this case?

A. Yes, sir; about going over there to buy this stuff.

Mr. Price: I move to strike out everything after "Yes, sir."

The Court: Motion granted.

By Mr. Price:

Q. Where did you speak to Nunzio?

A. At New York, also at Brooklyn.

Q. You say in New York, did you meet him in Mr. Oyler's office?

A. Yes.

Q. And that was the place that you spoke to him first?

A. Yes, when we got this work.

Q. That was the 14th of January?

A. On the 14th of January.

Q. Then you spoke to him on the same day in Brooklyn, is that right?

A. Yes, coming along from there to Brooklyn, we spoke about it also.

Q. Did you and this man Nunzio—Nunzio is an Italian, like yourself, isn't he?

A. Yes, sir; he is an Italian.

Mr. Brancato: That is not against him, is it?

Mr. Price: That is to his credit. I have the highest regard for Italians, and you know that, Mr. Brancato.

[fol. 54] The Court: Proceed.

By Mr. Price:

Q. Did you come to Brooklyn with Nunzio?

A. Yes, sir.

Q. How did you come to Brooklyn with him?

A. On a Court Street car over Brooklyn Bridge.

Q. A Court Street car?

A. Yes, sir.

Q. To Union Street?

A. Yes, sir; up Union Street.

Q. And walked down Union Street to 138 Union Street?

A. Yes, I don't know, about four or five blocks away from there.

Q. What time was that?

A. Well, we started from New York about half past twelve. We walked along; then when we reached there, it was about two o'clock.

Q. Were you and Mr. Nunzio alone?

A. Yes, sir; both of us.

Q. Did any of the other men in the Internal Revenue Bureau follow you, that you know of?

Mr. Brancato: You mean at two o'clock?

Mr. Price: That is what I am talking about.

Mr. Brancato: All right.

Mr. Price: The record shows it if you follow the sequence of the questions.

A. No, not at that time.

By Mr. Price:

Q. Then you got to 138 Union Street; is that correct?

A. Yes, sir.

Q. Who knocked at the door?

A. Nunzio.

Q. Was the door locked?

A. Yes, closed, certainly, because they asked us to come in.

[fol. 55] Q. Did somebody unlock the door for you to come in?

A. I don't know, it may have been Stephano, I don't know.

Q. Who do you mean by Stephano?

A. The old man, I don't know who.

Q. Then you and Nunzio walked inside?

A. Nunzio entered and then I followed.

Q. Now, up to that time you had never seen the defendant Centorino?

By the Court:

Q. Whom do you mean by "Stephano"? The defendant Alba?

A. Yes, sir.

By Mr. Price:

Q. Up to the time that you went into 138 Union Street, for the first time, on the 14th of January, you had never seen the defendant Centorino, had you?

A. Never saw him.

Q. Now, wasn't it a fact that Nunzio told you that he had been at Alba's house on the 13th of January, 1922?

A. No, sir.

Q. When you got in on the 14th of January, with Nunzio, you had a talk with Alba? Yes or no?

A. Yes.

Q. Nunzio introduced you to Alba and told Alba the reason he was bringing you there?

A. Yes, sir.

Q. And after this talk you were told to return that evening?

A. Yes.

Q. And then you went away?

A. Yes, sir; I went away.

Q. Did you go away with Nunzio?

A. Yes, sir.

Q. Where did you go to?

A. We went back to the office at New York.

Q. That is, when you say "We," you mean yourself and Nunzio?

A. Yes, both of us.

[fol. 56] Q. What time did you get back to the office?

A. About four o'clock; I don't remember; about half past three or four o'clock.

Q. Of course, when you went to this place, No. 138 Union Street, you never intended to buy cocaine, did you?

A. Yes, we went over there to buy it; that is what — went for.

Q. You went over there to get evidence to prosecute somebody, didn't you?

A. We went over there to buy.

Q. You answer my question yes or no. Did you go over there to get evidence against somebody?

Mr. Brancato: I object to the question as a conclusion. He is giving the correct answer as to the state of facts. We went over there to buy, to see if we could buy.

The Court: Objection overruled.

By Mr. Price:

Q. Put the question to him, yes or no.

A. Yes, we went over there to buy and find also—to find out whether we could buy it or not.

Mr. Price: I move to strike out everything after the word "Yes."

Mr. Brancato: I object.

The Court: Motion denied.

By Mr. Price:

Q. I asked you one question, and I want you to answer me yes or no; do you understand that? Did you go over there to get evidence against somebody?

Mr. Brancato: I object to that form of the question, if the Court please.

The Court: Objection overruled.

[fol. 57] The Interpreter: He made the same answer, "whether I could buy or not."

Mr. Price: Will your Honor direct the witness to answer yes or no?

✓ The Court: Yes. Answer it yes or no, can't you?
 The Witness: Yes.

By Mr. Price:

Q. How long did you stay in your office after you got back there on the afternoon of the 14th?

A. Well, about half an hour or an hour and then we went out; we went back again.

Q. During all that time that you were at the office, up to the time that you returned, between seven and eight, was Nunzio with you?

A. He was always with me.

Q. Now, when you returned, between seven and eight o'clock on the night of the 14th, who let you in the door?

A. We went in the same way.

Q. Who let you in, I asked you?

A. Alba.

Q. You mean the defendant Alba?

A. Yes.

Q. Who was there when you got there?

A. It was him and his wife.

Q. His wife is an old paralyzed woman who sits in a chair, isn't she?

Mr. Brancato: I object to the "paralyzed" business. We are not trying his wife here.

Mr. Price: I mean to account for the actions of the witnesses, Mr. Brancato, and I will account for it on cross examination.

The Court: Objection overruled.

A. I do not know whether that is his wife or not. He said it was his wife. I saw her sitting on a chair there. That is all I know.

[fol. 58] By Mr. Price:

Q. The woman you saw sitting in the chair you never saw move an arm, did you?

A. No, she was sitting there.

Q. And every time that you went there she was sitting there?

A. Yes, that is the way it happened. I found her sitting there all the time.

Q. So when you and Nunzio went in between seven and eight o'clock in the evening as you have told us, the defendant Alba and his wife, you and Nunzio, were the only people there?

A. I don't know whether it is his wife or not, but I say yes, we were.

Q. After you were there for a while, the defendant Alba went out and left you and Nunzio in the house?

A. Yes.

Q. And after he had been out for, as you say, from seven to fifteen minutes, he returned and Centorino came in behind him?

A. Yes.

Q. And then you say that Alba gave you some samples?

A. Yes, sir.

Q. Did you at that time show Alba any money? Yes or no.

A. Yes.

Q. Did you take the money out and count it in front of Alba at that time?

A. No, I did not count it. I just showed him the money.

Q. Then after having looked at the samples, you made an appointment to come back again Monday night?

A. No. I wanted to buy that very same evening, at that time, but he refused to sell me \$350 worth unless I bought a kilo or two kilos.

Mr. Price: I move to strike out the answer as not responsive.

[fol. 59] Mr. Brancato: I object to its being stricken out; it is quite responsive.

The Court: Strike out the answer.

By Mr. Price:

Q. Did you make an appointment at that time to come back on Monday night?

A. Yes.

Q. Now, when you came over on Saturday evening, did you come over with Nunzio?

A. Yes, sir.

Q. Was anybody else with you?

A. There were four more which followed us.

Q. Were they on the same car with you?

A. Yes, sir; when we went, we all went in the same car.

Q. You got off the car—

Mr. Brancato: Wait a minute; he is going to answer.

Mr. Price: He has already answered my question.

Mr. Brancato: He is giving an explanation. I do not know what he is saying.

Mr. Price: You know what he is saying.

Mr. Brancato: I don't know. I did not hear it.

Mr. Price: I submit the question is answered.

Mr. Brancato: I object, if the Court please.

(The record from the question, "Now, when you came over on Saturday evening, did you come over with Nunzio," etc., down to and including, "Mr. Brancato, I object, if the Court please," is repeated by the reporter.)

[fol. 60] The Court: Had you finished your answer to the question at the time that counsel asked you where you got off the car?

The Witness: I was not finished.

By the Court:

Q. Please finish your answer.

A. When we came over we all came together and after that we

found out that there was nothing doing that night, Nunzio went away by himself. We went away by ourselves.

Mr. Price: I move to strike out the answer on the ground that I asked him a question, if they all came over together. It is not responsive, the answer.

The Court: Yes, motion granted.

By Mr. Price:

Q. Did you all get off the car at the corner of Court Street and Union Street?

A. Yes, sir.

Q. Did you all walk down Union Street together?

A. No, we separated, one going one way, one another way.

Q. How many was in your party when you got off the car?

A. About ten or eleven altogether.

Mr. Brancato: What night are you speaking about, Mr. Price?

Mr. Price: I submit that I should not be interrupted, if the Court please.

Mr. Brancato: If the Court please, what night does he mean? Does he mean Monday night, Saturday night, Saturday afternoon, when?

Mr. Price: I submit the record speaks for itself. I submit the Dis-[fol. 61] trict Attorney has no right to interrupt my cross examination to ask any questions.

The Court: Wait one minute. We have gone along to a night we are perfectly familiar with.

Mr. Brancato: There are three nights, two nights that they were there. There have been a lot of interruptions. Is it going to do any harm to the defendants if we know what night he is asking the witness about?

The Court: Ask him that question. What night was it that you now speak of?

The Witness: Monday night.

Mr. Brancato: He is talking about Saturday night.

Mr. Price: He understands English and when Mr. Brancato gives him a cue when I have caught him on something, he tells him how to answer. He may as well get on the witness stand.

Mr. Brancato: Not at all.

Mr. Price: I submit, if your Honor please, that Mr. Brancato ask no more questions while I am cross examining. If he has any objections to make he has a perfect right to get on his feet and make them.

The Court: Make your objection.

Mr. Brancato: My objection was, if the Court please, that counsel specify the time that he is talking about.

The Court: It was not put in the form of an objection but in the form of a statement. Let there be objections hereafter.

Mr. Brancato: I do not see why you are objecting to the truth.

Mr. Price: I am not objecting to the truth; I am after it more than you are.

[fol. 62] By Mr. Price:

Q. I was talking to you about Saturday night? Wasn't I? Yes or no?

A. I am referring to Monday, I am not referring to Saturday about that.

Q. You heard Mr. Brancato say Monday night when he got up on his feet.

Mr. Brancato: I did not say Monday at all, if the Court please. I said either one or the other.

By Mr. Price:

Q. Wasn't I asking you about Saturday night all along?

Mr. Brancato: I object to that form of the question if the Court please, on the ground that the witness cannot tell what he is thinking about. Ask him what he thought, not what counsel thinks.

Mr. Price: I did not ask him what he thought. I asked him what I was asking about.

Mr. Brancato: I object to that form of the question.

The Court: Objection overruled.

A. I understood it was Monday.

By Mr. Price:

Q. Twice you have misunderstood me, isn't it?

Mr. Brancato: I object to any further comment of that kind, if the Court please.

The Court: Objection overruled.

A. As to what I understood from you I thought you were referring to Monday. That is why I answered that way.

[fol. 63] By Mr. Price:

Q. Didn't I ask you about Saturday night, who came over with you on Saturday night?

The Interpreter: He said, "You told me about Monday."

By Mr. Price:

Q. Are you sure that I said something about Monday?

A. (By the witness in English.) I asked my friend——

The Interpreter: He said, "The Interpreter said 'Monday.'"

Mr. Price: I ask that the witness talk Italian.

A. I am referring to the Interpreter, who I understood to say Monday.

By Mr. Price:

Q. Didn't I ask you if you and Nunzio came over on the Court Street trolley between seven and eight, Saturday night?

A. Yes, that was on the first night.

Q. What do you mean that was the first time; it was the second time that you had come over with Nunzio, wasn't it?

A. The first time, two o'clock, the second time about six to seven—I mean seven to eight.

Q. How long have you been in America?

A. Eight years.

Q. How long have you been employed in the Internal Revenue Department?

A. Two years.

Q. Will you get down, so that there is no misunderstanding about it, to Saturday night, between seven and eight o'clock; do you understand that now?

A. Yes.

[fol. 64] Q. You came over with Nunzio?

A. On Saturday night I came together with Nunzio and four others, which makes six all told.

Q. How did you come over there?

A. The same way, by car.

Q. Court Street trolley, Court and Union Street?

A. Court Street car.

Q. You got off at Court and Union Street, didn't you?

A. Yes, sir.

Q. Did you all get off together?

A. Yes, sir.

Q. Did you stand on the corner and have a talk before you went in the direction of 138 Union Street?

A. No, we had discussed that before.

Q. So that when you got off the car there were six in the party?

A. Yes, I, my partner and four officers.

Q. You all started to walk in the direction of 138 Union Street, is that correct?

A. Yes, sir, first leading I and my partner and then they followed us.

Q. What side of the street did you walk down, on the same side that 138 Union Street is on?

A. On the left hand going down.

Q. That is the same side as 138 Union Street is on?

A. Yes, the same side.

Q. So that as you walked toward 138 Union Street Nunzio and you were in front?

A. Yes.

Q. Did you walk nearer the gutter or did Nunzio walk nearer the gutter?

A. I do not recall that. I paid no particular attention to that.

Q. Do you know how the other men walked behind you, in what order?

A. I did not see them at all, but they could watch me all right.

Mr. Price: I move to strike that out, "They could watch me all right," on the ground that it is a conclusion.

The Court: Motion granted.

[fol. 65] By Mr. Price:

Q. Did you ever see the other four men from the time that you got off the car and started to walk down Union Street until you went into 138 Union Street?

A. No, sir.

Q. You never put your eyes on them up to the time that you went into the door, is that right?

A. No, sir.

Q. When you say "No, sir," you mean that is correct, that you never saw them again?

A. No, I know by the time I took to go there. I did not have to look at them, they were looking at me all the while.

Mr. Price: I move to strike that out, "They were looking at me all the while."

The Court: Motion granted.

Mr. Price: I ask your Honor to direct this witness when I ask him a question which is susceptible of a "yes" or "no" answer to answer it yes or no.

Mr. Brancato: If he can.

The Court: When a question is put to you which seems to be of a kind that can be answered by yes or no, either say yes or no, or state "I cannot answer that yes or no."

By Mr. Price:

Q. The next time after you left the men who were walking behind you down Court Street that you saw them was after you had been in Alba's house and had come out and met them on the corner, is that correct?

A. (By the Interpreter.) I am sorry, we did not go out on the sidewalk, is that what you mean, he said.

Q. No, you went into 138 Union Street, you told us.

A. Yes.

[fol. 66] Q. You did not see the men up to the time that you went into 138 Union Street, after you left them and you walked down the block?

A. No, sir.

Q. That is, you did not see them?

A. No, sir.

Q. So that you went into 138 Union Street and you had a talk with Alba and Centorino was there, is that right?

A. Centorino was not there at that time.

Q. Was not Centorino there when you talked about the samples?

A. Alba went over and got Centorino; he was there after that.

Mr. Price: I move to strike out the answer as a conclusion of the witness, that Alba got Centorino.

The Court: Motion granted.

By Mr. Price:

Q. Centorino was there when you were talking about the samples, wasn't he?

A. When I entered there first, he was not there. Alba went over and got him.

Q. When you started to talk about the samples Centorino was there, wasn't he?

A. No, sir; he was not.

Q. So that your entire talk about the samples was between you and Alba; is that right?

Mr. Brancato: I object to the form of the question; "the entire talk" may not have been——

Mr. Price: I will withdraw the question.

The Court: Question withdrawn.

By Mr. Price:

Q. When you got in there you say that you spoke to Centorino about the samples; is that right?

A. No, sir.

[fol. 67] Q. Did you say a word about the samples when you got in there before Centorino came?

A. Yes, sir, I did. I told you that Alba said that he had samples and he was going to get his partner so he could explain it better.

Q. Now you say that he described the other man as his "partner," is that right?

A. Yes, sir.

Q. This morning you said "friend," didn't you?

A. Well, I believe "partner" and "friend" mean the same thing.

Q. Oh, you do? But this morning you did say "friend," didn't you? Yes or no?

A. The way I understand Italian, they mean just the same.

Q. "Friend" and "partner" mean just the same thing? That is what you understand?

A. The way I can explain that is that I consider it so among the Italians, they consider that when two friends are together, they consider themselves as partners, in anything.

Q. What is the word for partner in Italian? Give me the Italian word for "partner."

A. Campagno.

Mr. Brancato: May I ask a question?

Mr. Price: I submit that I be permitted to continue my cross examination. I did not interrupt him.

The Court: Yes.

Mr. Brancato: I want to see that the stenographer gets the word down.

By Mr. Price.

Q. The word for "friend" is "amico" or "amici" isn't it? Yes or no?

A. Call it both ways, amico or campagno.

Q. Did you ever look either of those words up in the dictionary? [fol. 68] A. The way I understand "campagno" means that when two people do business or transact business together, I consider that "campagno."

Q. Then when you want to say a "good friend," you say "bono amico," don't you? Yes or no?

A. You can use so many words, "bono amico" or "campagno."

Q. So, according to your idea, "campagno" and "amico" are the same?

A. The way I understand my Italian is that "campagno" is people that do business together and are friends, that is the way I can express it.

Q. What word did Mr. Alba use when he spoke to you about the other man?

A. He said "campagno."

Q. That means "partner?"

A. I don't know whether they are partners or not, but that is the way I understand it is.

Q. When you spoke this morning you testified that he said "friend," didn't you?

A. They way I understand it both the words, transacting the same business.

Mr. Price: I move to strike out the answer on the ground that it is not responsive.

The Court: Motion granted.

(The last question was repeated by the reporter.)

By Mr. Price:

Q. Yes or no?

A. Why should I answer? I cannot answer that yes or no.

Q. Don't you remember here this morning, whether you said "friend" in English or not?

A. I don't remember.

Q. That is you- best answer? Yes or no please?

A. That is the way I understood it, that is the way he spoke to [fol. 69] me; he called his friend, he called him his "campagno."

Q. Getting down to Monday night, you testified that there were eleven men with you, in response to my question, is that correct?

A. Yes, ten or eleven of them.

Q. On Monday night?

A. Yes, sir.

Q. You are sure about that?

A. Yes, I am sure of it, ten or eleven.

Q. Which was it, if you are so sure, was it ten or eleven with you?

A. I did not count them all, but I am sure it was ten or eleven.

Q. All right. Now, let us see. Count them for us now. Who were with you on Monday night?

A. Oyler, Mr. Manning, Mellon, McCormack——

Q. Four?

A. Mr. Jim Munk, me Pacetta and Mr. Nunzio.

Q. Eight?

A. Mr. Connolly.

Q. Nine. Were there any more with you?

— I don't remember. I don't know if I remember all. Nine or ten. I cannot remember any more. Ten or eleven.

Q. So that there were nine of you there, is that correct?

A. I don't know, nine, ten or eleven; I cannot recall exactly.

Q. You have just named everybody that was with you, didn't you?

A. Possibly, may be that I forgot someone's name; I don't remember.

Q. Your memory is good, isn't it?

A. Yes, but you cannot always remember everything.

Q. This morning you testified, didn't you, that there were seven or eight with you all told?

A. No, I said seven or eight, nine, ten, I don't know.

Q. Now, when you went in Monday night with Nunzio you sat in the kitchen, didn't you?

A. Yes, sir.

[fol. 70] Q. And Alba was there alone with his wife?

A. Yes, sir.

Q. You sat in the kitchen and started to talk with Alba, isn't that right?

A. Yes, sir.

Q. And the next room off the kitchen is the room with the table in it, is it not?

A. Yes, there was a table there then. I do not know whether there is one there or not now.

Q. As you walk in the door there is a little hallway like this space behind the jury box, isn't there?

A. Yes.

Q. Right next to this little hallway, say where the jury box is, would be the kitchen?

A. As you go into the door, the first room is the kitchen.

Q. The first room to your right?

A. Yes, as you go in, at your right.

Q. The next room over here, say over where I am, would be the room with the table in it?

A. There was two rooms, one after the other.

Q. But the same as I have indicated here, first a hallway like behind the jury box, the kitchen, where the gentlemen of the jury

are sitting, and a room over here like where I am standing, is that correct?

A. Yes.

Q. The kitchen and the adjoining room face on Union Street?

A. Yes.

Q. So that when you were in there, you were seated in the kitchen with Alba and his wife and Nunzio?

A. That is where they were; certainly they were there.

Q. Was there a light in the room next to the kitchen where the table was at that time?

A. There is gas there. I did not pay any particular attention as to whether lit or not.

Q. Did you not know that after Alba came, returned to his home—didn't you know that after the defendants Centorino, Thomas and [fol. 71] Frank Agnello and Pace, came into 138 Union Street, that the defendant Alba went into the room where the table was and made a light for the first time that night while you were there?

The Court: Made what?

Mr. Price: Made a light. I should say lit the gas.

A. I don't remember that.

By Mr. Price:

Q. You won't say that did not take place, will you?

A. I do not remember it.

Q. Please answer my question yes or no. You won't say that did not take place at that time?

Mr. Brancato: I object. He has answered the question.

The Court: Objection sustained.

Mr. Price: I except.

Mr. Brancato: Yes or no.

By Mr. Price:

Q. Isn't it a fact that the first time that the light was lit in the room adjoining the kitchen was after the four defendants, whose names I have given you, arrived there; yes or no?

A. I don't remember that.

Q. Is that your best answer?

A. I don't—I can't state anything else. That is all I can state.

Q. You appreciate the fact that you are under oath?

Mr. Brancato: Oh, I object to that statement.

The Court: Objection overruled.

Mr. Brancato: Of course he does.

[fol. 72] By Mr. Price:

Q. You appreciate the fact that you are under oath, don't you?

A. I don't want to say anything that I don't know I know I am under oath.

Q. Now, when you got down there on Monday night, did all of these nine men come with you on the trolley car from New York?

A. Yes, they were all in one car.

Q. The same trolley car, the Court Street trolley?

A. Yes.

Q. And you all got off the trolley car at Court Street and Union?

A. Yes.

Q. Did you and Nunzio walk down the street the same as Saturday night?

A. Yes, sir.

Q. Did the other men walk down the street behind you?

A. Yes, sir.

Q. Do you know in what order they walked down the street behind you?

A. I did not see them.

Q. That is, you did not see them from the time that you left them at the corner of Court and Union Street up to the time that they broke into the house; is that correct?

A. I did not see them until then.

Q. You never stopped after you left them on the corner of Court and Union Street, and spoke to Oyler or one of the other men down there, did you?

A. No, sir.

Q. The only man that you were speaking to was Nunzio, on the way down?

A. Yes, sir.

Q. You are absolutely positive that you did not see any of the other men but Nunzio from the time that you left them at Court Street and Union Street up to the time that they broke into 138 Union Street?

A. We saw them before they broke the door.

[fol. 73] Q. Didn't you a few minutes ago in reply to my question say that you did not see them until after they broke their way into 138 Union Street; yes or no?

A. No, sir.

Mr. Price: May I have the record read? I am sure of this, about ten questions back. I would like to get that straightened out.

(The record was repeated from the question, "Now when you got down there on Monday night, did all of these nine men come with you on the trolley car from New York?" etc., down to and including the answer, "I did not see them until then.")

By Mr. Price:

Q. So a few minutes ago you did say that you did not see them from the time you left them when they were walking down Union Street until they broke in, didn't you?

A. No, sir.

Q. You did not testify to that?

A. No, sir.

Q. When the stenographer read it to you that you did testify to it, he must have been mistaken, is that right?

A. No, that is the way I understood the question.

Q. Now, when you got into 138 Union Street you testified that Alba and his wife and Nunzio and you and he were the only persons there, is that right?

A. (By the interpreter.) A. He said "This is not No. 238."

Q. I said "138"?

A. Yes, when we went in there, yes.

Q. Then after a while Centorino came, is that correct?

A. Alba went over and got him.

Mr. Price: I move to strike out the answer on the ground that it is not responsive.

The Court: Motion granted.

[fol. 74] By Mr. Price:

Q. Will you please answer my question? Did Centorino come there after a while?

A. Yes.

Q. Then after Centorino was at No. 138 Union Street after a little while he went away?

A. No, he did not go out alone. We went out together at that time, the four of us.

Q. Now, before you went out, were you shown anything?

A. No, sir; at that time nothing.

Q. Alba wanted the money before he showed you anything, didn't he?

A. Yes.

Q. And you showed Alba your money?

A. I just showed him the roll. I did not count it.

Q. Did you hand it to him, put it in his hand?

A. No, sir.

Q. You just showed him a roll of money; is that right?

A. Yes, sir.

Q. And you told Alba it was \$350?

A. No, sir.

Q. Didn't you testify that it was \$350 in the roll?

A. Yes, I did.

Q. And there was \$350 in it, wasn't there?

A. Yes, there was \$350.

Q. You did not tell Alba how much was in the roll?

A. No, sir.

Q. Did Alba ask you how much money you had in the roll of bills?

A. No, sir.

Q. Now, after you were in there for a while, they wanted the money before you got your stuff, didn't they?

A. Yes, sir.

Q. They asked you how much money you had, didn't they?

A. No, they did not ask me, they only told me that they had to have seven hundred dollars.

Q. Who told you that?

A. Alba and Centorino.

Q. They told you that you had to have seven hundred dollars?

A. Yes, sir.

[fol. 75] Q. Who told it to you first?

A. Alba, I believe, said it first.

Q. Then after Alba said that you would have to have seven hundred dollars, did you answer him?

A. Yes.

Q. What did you say to him?

A. I said that I would give no money up until I saw the stuff.

Q. Then Centorino said that you would have to have seven hundred dollars, is that right?

A. Yes, before that he said it; yes.

Q. That is, Alba said it first, "You have to have seven hundred dollars to buy the stuff with?" Then Centorino said it?

A. Without making any answer, first Alba said it, then Centorino said the same thing.

Q. Alba said, "You will have to have seven hundred dollars," and after he said it Centorino said, "You will have to have seven hundred dollars," and you told him you had the money; is that right?

A. I answered that I would give no money up, not a cent, until I received the stuff first.

Q. Then Alba told you that they did not have the stuff there?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Then Alba told you that you would have to go with him and Centorino to get it?

A. Yes, he told me, "Now, if you are not afraid to come along with us, we will get it," and I said, "No, I would not go any place because I was a stranger around there; I was afraid to go around that way through the streets.

Q. Was that conversation inside or after you went out on the sidewalk?

A. Inside.

Q. And it was after that conversation that you told him that you were going to go away and you walked out on the sidewalk?

A. Yes, the four of us went out.

[fol. 76] Q. And stood on the sidewalk?

Mr. Brancato: One moment. I object to that on the ground—what does the "yes" mean, the conversation or went out?

Mr. Price: He said, "Yes, the four of us went out."

Mr. Brancato: The question is something about a conversation and going out.

The Court: Let us read the question.

(The question was repeated by the reporter.)

The Court: Did you tell him after the conversation?

Mr. Price: No, he said it was after the conversation that he walked out.

The Court: Ask him that first.

Mr. Price: That is what the record shows.

The Court: You put in two questions.

By Mr. Price:

Q. You had this conversation with him just related, is that right?

A. Yes, inside.

Q. And after that you told him inside that you would do no business with him, or words to that effect, is that right?

A. Yes, I told him if they did not want to give it to me I would go.

Q. After that you walked out on the sidewalk?

A. Yes, outside we said that.

Q. You said what outside?

A. Outside I told him, if he wanted to sell it to me, all right, "If you do not want to sell it to me I will go."

Q. You said that inside too, didn't you?

A. Not inside.

Q. Didn't you just tell these men that you said that inside?

[fol. 77] Mr. Brancato: I object. He did not say it.

The Court: Then he may say that he did not.

Mr. Price: What chance have I got? I ask you again to please instruct Mr. Brancato to object in the proper way and not make statements. This witness understands English and he has the benefit of an interpreter. Mr. Brancato tells him just what to say.

Mr. Brancato: If the Court please, I object.

The Court: The Court has ruled. Please proceed. Put the next question to the witness.

Q. Didn't you just tell these men that you said that inside? Answer that yes or no?

A. Yes, inside I said it, if I did not get the stuff I would give up no money.

Q. You said it outside too, didn't you?

A. Outside I said, "If you want to do any business with me, all right, if not I will go."

Q. Who walked out of the door first, you or Nunzio?

A. I don't remember which one of the four went out first.

Q. Did Nunzio go out ahead of you?

A. I don't remember.

Q. You cannot remember whether you or Centorino or Alba or Nunzio went out first?

A. No, I don't remember that.

Q. Did you see the men outside when you went out, the other men who came over with you?

A. Yes.

Q. Where were they?

A. They were walking up and down.

[fol. 78] Q. So that your testimony that you gave here a little while ago that you did not see the men from the time that you went into 138 Union Street until the time you went into the door was not the fact, was it; until they broke into the door, was not the fact, was it?

Mr. Price: Will you please instruct this witness again, once again, when I ask him a simple question that calls for yes or no, to answer yes or no?

The Witness: I want to tell what is right. I don't want to answer the way that you want.

The Court: The Court told you before that if you cannot answer a question by yes or no, say, "I cannot answer that by yes or no." No explanations at all, except the statement, "I cannot answer that by yes or no."

A. I cannot answer that question that way.

By Mr. Price:

Q. That is, you cannot answer the question that when you told these twelve men a few minutes ago that you did not see the men who came down Union Street behind you from the time that you left them on Court and Union Street-, up to the time that they broke into the door, whether or not that is the fact, can you?

A. When they broke the door I saw them.

Mr. Price: I move to strike out the answer on the ground that it is not responsive.

The Court: Motion granted.

Mr. Price: Please repeat the question.

(The last question was repeated by the reporter.)

[fol. 79] Mr. Brancato: I object to the form of the question, that is, I object to the answer which counsel wants, yes or not. The question is too complicated, especially when it has to go through an interpreter, why, it takes a genius to understand.

The Court: The witness may say, "I cannot answer it yes or no."

Mr. Brancato: If he cannot answer it yes or not, let him say so.

Mr. Price: Of course, your Honor, I know what the answer is going to be now.

Mr. Brancato: You know because——

The Court: Go right on.

Mr. Price: Because you told him; it is unfair.

Mr. Brancato: I did not tell him.

Mr. Price: That is what I am objecting to in this trial.

Mr. Brancato: I think I have a right to object to a question without being criticized.

The Court: The Court instructs the attorney for the Government, while this witness is on the stand not to make any reference to a question that can be answered by yes or no. This Court has instructed the witness twice. I mean, not to make any reference to

this witness not being able to answer a question by yes or no. The Court has notified the witness of that.

Mr. Brancato: That is true. When the question is too complicated and when the answer is wanted yes or no, I think I have a right to object.

The Court: Object, but object just as briefly as you can, without any argument.

[fol. 80] (The same question was repeated by the reporter.)

A. I saw them when I came out, that is what I saw.

Mr. Price: I move to strike out the answer on the ground that it is not responsive.

A. Yes, I saw them.

The Court: Do you want that to stand?

Mr. Price: No, I want that out.

The Court: Motion granted.

By Mr. Price:

Q. Can't you answer the question which I just asked you, Mr. Witness?

A. The last question is too long for me to understand. Make it shorter and may be I will understand it better.

Q. Is it or is it not a fact that you saw the men that you left at Court and Union Street, before the door was broken in?

A. Yes, I did.

Q. So that when you testified here this morning that you did not see the men that you had left walking down Union Street from Court Street, before the door was broken in, you were mistaken?

A. No, I did not say that at all.

Q. Do you now deny that you so testified this morning?

A. I don't remember stating that.

Q. Don't you remember a little while ago I had part of your testimony read to you on that point?

A. I don't remember.

Q. Your memory is good, isn't it?

A. I believe it is.

Q. You remember all the conversations that you had with the defendants in great detail, don't you?

A. Well, because that is an important matter.

[fol. 81] Q. My matter is a minor matter, isn't it?

A. Oh, yes, it is important also. Sometimes you cannot remember everything.

Q. After you went out on the sidewalk, you say Centorino went away, didn't he?

A. Yes, he went and he said, "Come up to the house and we will talk business over there."

Q. Who said that?

A. Alba. He said, "Come into my house."

Q. That is, Centorino left you and Nunzio and Alba when you were out on the sidewalk and after Centorino left Alba said, "Come into the house and we will talk business in the house"?

A. Yes.

Q. Then you and Nunzio and Alba went back into his house?

A. Yes, and Alba, yes, sir.

Q. How long were you in the house before Centorino came back with somebody else?

A. About twenty or twenty-five minutes.

Q. Where were you seated when Centorino came in?

A. Some were sitting, some were standing.

Q. Did you understand my question?

A. In the kitchen.

Q. Well, leading from the kitchen into the room where this table was, was a doorway, wasn't there?

A. Yes, sir, there is.

Q. Were you seated in the kitchen so that you could look into the next room through the doorway?

A. No, sir I could not look in there.

Q. That is, you could not see into the next room from where you were seated, is that right?

A. No, you could not see the entire room there. You can see the door where it opens, but you could not see anything else.

Q. On this Monday night that you are talking about, was the door open or closed?

[fol. 82] A. When I, Nunzio and Alba were talking together, that door was open. It was not all entirely open; it was partly open.

Q. Will you please indicate with your hands how far it was open?

A. It was not locked, I mean. I do not mean that way. It was not locked.

Q. It was shut though, wasn't it?

A. Yes, but there was no lock.

Q. Look at the door right behind you, leading into the Judge's rooms. Was it shut tight?

A. Closed altogether.

Q. But not locked, is that right?

A. Yes.

Q. You understand the door I am talking about?

A. Yes, I understand the door.

Q. What door am I talking about?

The Interpreter: Your Honor, may I explain?

The Court: Can't you put the question to the witness?

The Interpreter: I can, your Honor, but he talks about a hallway.

There was not a word said about a hallway.

Mr. Brancato: May I have the Court instruct the interpreter to ask the question as it is put to him.

The Court: Yes, that is the thing to do.

Mr. Brancato: And not to argue with the witness.

The Interpreter: I asked him—

Mr. Brancato: The question is from counsel, "What door am I talking about?"

The Court: Yes, ask that question.

A. The hallway door.

[fol. 83] By Mr. Price:

Q. Wasn't I asking you about the door which led from the kitchen into the room where the table was; didn't I say that?

A. I did not understand that.

Q. Do you have difficulty in understanding the interpreter?

A. Well, I wanted to explain that, whether you meant the hallway or what you meant. That is why I did not understand it.

Q. But you do not have any difficulty in understanding the interpreter, do you?

A. No, sir; not at all.

Q. You do not have any difficulty in understanding my question in English, do you?

A. Of course, if I understood, I would not need an interpreter.

Q. You do not understand what I ask you in English without the aid of an interpreter, do you?

A. Sometimes I do and sometimes I don't.

Q. Tell us about this door leading from the kitchen into the room where the table was that you saw the packages on which have been offered for identification?

Mr. Brancato: If the Court please, I object to that.

By Mr. Price:

Q. Tell us about that door.

Mr. Brancato: I object to the question, unless we have evidence here that there is any door between one room and the other. Now we have a kitchen door between the kitchen and the hallway. There is no evidence that I can see of any door between the kitchen and the next room.

[fol. 84] The Court: Find that out first.

Mr. Price: He has been testifying to it.

The Court: Since the Government raises the question, was there a door between the room and the kitchen?

The Witness: I know you can walk through there, but I don't know whether there is a door there or not. I do not know.

By Mr. Price:

Q. Didn't you testify at great length that you were seated in the kitchen in a place that you could not look through that door; didn't you say that, yes or not?

A. Yes, I said that. I cannot state whether there was a door there or not. If I stand over here, looking over there, I don't know whether there was a door there or not.

Q. You walked through from the kitchen into the room where the table was, didn't you?

A. Yes, after I went in there, when the stuff was produced.

Q. Yes, when the stuff was on the table, as I asked you, you walked in, didn't you?

A. You did not ask me that before.

Q. Well now, you have walked through there; you have just said a minute ago; is there or is there not a door there?

A. The way I noticed that, the way that I looked at it, whatever was that entrance over there, I walked right through and I paid no particular attention to it whether there was a door or not.

Q. That is you walked through an open space and you cannot tell these gentlemen whether or not there was a door there?

A. No, it was not necessary; I paid no attention to it.

[fol. 85] Mr. Price: I move to strike out, "It was not necessary."

The Court: Strike it out.

By Mr. Price:

Q. With reference to this open space, leading from the kitchen into the room where the table was, where you saw these blue packages, were you seated opposite so you could look into the room and see the table?

A. No, I was a little bit to one side.

Q. So that you could not see into the other room through this opening, could you?

A. The space of the door can be seen where the door is supposed to be, but you could not see what is going on in that room from where I was sitting.

Q. That is, you could not see the table in the next room?

A. No, sir; you could not.

Q. After the defendant Centorino came in, and the two defendants Agnello and the defendant Pace came in, how long a time elapsed before your brother officers broke in the door? A. About five or six minutes.

Q. Was it as long as that?

A. Yes, I guess it elapsed that much time because we walked in the room and followed them. They showed me the stuff. I guess it must have been that time.

Q. As soon as the defendant Centorino came in he walked into the adjoining room where the table was, with the defendant Alba, followed by the other defendants, is that right?

A. The knock came at the door, the door was opened, four of them came in together. Alba opened the door and they all walked in together.

Q. That is, they walked into the kitchen where you were?

A. Yes, they walked through the gitchen into the next room.

[fol. 86] Q. Now, after they all came in, was Alba the first man to go from the kitchen into the next room?

A. No, he was the last man, because he locked the door.

Q. As soon as Alba walked into the adjoining room, didn't Alba light the gas?

A. I don't know. I cannot state that. I do not know who lit the gas.

Q. As soon as Alba let the men in, you say the four defendants walked into the room where the table was?

A. Yes, sir.

Q. Alba locked the door?

A. Yes, sir.

Q. He went into the same room where the other men were?

A. Yes, sir.

Q. You followed him with Nunzio; yes or no?

A. I do not want to answer the question yes or no.

Q. Did Nunzio go into the room ahead of you?

A. Yes, sir.

Q. And then you followed Nunzio?

A. They had a talk with Nunzio; then they called me in.

Q. That is, after Alba locked the door and walked into the room where the four defendants were, Nunzio walked into the room and you stayed in the kitchen?

A. Yes, Nunzio was with me at first.

Q. Then Nunzio was in the room with the five defendants?

A. Yes, that was about a minute after.

Q. The room where this table where the blue packages were on it?

A. Yes, sir.

Q. And then you were called in by Alba?

A. Yes, sir.

Q. And you saw the packages on the table?

A. Yes.

[fol. 87] Q. And you were in that room with these defendants and Nunzio at the time that your brother officers broke in?

A. Yes, sir.

Q. Well, now, was there a shot fired while you were in that room?

A. Yes, sir; I heard a shot.

Q. That is, the shot came from the street through the window, didn't it?

A. I heard the shot. I do not know where it came from.

Q. Don't you know that the shot came from the street from one of your brother officers?

A. I did not know that.

Q. Did you hear the glass break when the shot was fired?

A. I do not know. I heard the shot. I do not remember about the glass.

Q. You did not hear any glass break, did you?

A. I paid no attention to it.

Q. Now, don't you know, as a matter of fact, that just as soon as the defendants got into the room, Mr. Alba lit the light, and a shot was fired and the door was broken open immediately?

Mr. Brancato: Wait a moment. I object to the question upon the ground it is a negative pregnant. He has four questions there.

The Court: I think you ought to divide that question up. The Court directs counsel for the defendant to put his question in a simpler form.

Mr. Price: I except.

By Mr. Price:

Q. Isn't it a fact that as soon as the five defendants were in the room.

The Court: One minute, the ruling is withdrawn. I will let the jury determine whether this examination is of the sort contended by [fol. 88] counsel for the Government. Counsel for the Government contends the question is too involved. I will let the question be read to the witness.

Mr. Brancato: That is not the ground of objection. The ground of the objection is that it is a negative pregnant. Some facts in there that have been denied.

The Court: Very well. You object on the ground that it is a negative pregnant. Objection overruled. The question may be put to the witness.

Mr. Price: I will reframe the question. I will withdraw it.

By Mr. Price:

Q. Isn't it a fact that just as soon as the five defendants got into the room where the table was and you walked into the room, before anything else transpired, a shot was fired, the door broken in and all the defendants arrested?

A. Yes, we were all in there; the door was broken in and they all walked in.

Q. Don't you know Mr. Napolitano, that Mr. Nunzio was the man that furnished these drugs to the defendant Centorino?

A. I do not know that.

Mr. Price: I think that is all.

The Court: Is there any further cross examination?

Mr. Kesselman: Just a few questions.

The Court: This is by the defendants—

Mr. Kesselman: Thomas Agnello and Pace.

Cross-examination by Mr. Kesselman:

Q. I am going to ask you some questions in English and I want you to answer through the Interpreter in Italian.

[fol. 89] Q. How long have you been in the Government Service?

A. Two years.

Q. What was your business prior to that time? A. I was a baker.

Q. Where did you work? A. National Biscuit Company at Fulton Street.

Q. In Brooklyn? A. New York.

Q. Is that the only job that you have had since you came from Italy to the United States? A. I also worked in a coal yard.

Q. What other jobs have you had since you came from Italy? A. You mean with the Government?

Q. No, aside from the Government jobs? A. I worked as a gardener and a farmer and I went in hot houses; greenhouses.

Q. How many different jobs have you had since you came here from Italy? A. Three or four different jobs.

Q. Well, you worked for the Biscuit Company? A. Yes, sir.

Q. You worked in a coal yard? A. Yes.

Q. And as a gardener? A. Yes.

Q. What other jobs have you had? A. That is all.

Q. When did you last see Nunzio? A. Some time last month.

Q. Where? A. At the office in New York.

Q. During your examination by Mr. Brancato you repeatedly and continuously referred to this man Nunzio as your friend, the gentleman right here, the District Attorney, the Assistant United States District Attorney (indicating). A. It is a partner.

Q. Didn't you repeatedly refer to him as your friend in response to questions by Mr. Brancato? A. Yes, we ate together at times. [fol. 90] I know him. I call him a friend anyway.

Q. You did not once at that time say that he was your partner, did you? A. I never said that.

Q. You never said what? A. What you are trying to tell me.

Q. What am I trying to tell you? A. What you said to me.

Q. Now, tell me what I said to you? A. Repeat the question.

Q. You just said that I am trying to tell you something and you never said it. Tell me what it was that I said that you did not say?

Mr. Brancato: I object to this.

The Court: Read the question and if he cannot answer it, let him say so.

Mr. Kesselman: He says that I am trying to get him to say something and after he argues around for a while, he wants the question repeated.

(The last five questions and the last four answers were repeated by the reporter.)

A. I always considered him to be a friend of mine, because we ate together many times; we went out. I could not say anything else but a friend.

By Mr. Kesselman:

Q. During the time that you were testifying, when Mr. Brancato was questioning you, you always said the man that you went to Alba's with was a friend, didn't you? A. Yes.

Q. You once used this term, "A friend of mine introduced me to Alba," do you remember that you said that? A. Yes.

[fol. 91] Q. On another occasion you said, "He said to my friend, 'Is he all right'?" A. Yes.

Q. On another occasion you said, "I went back at seven and saw

Alba with a friend." Do you remember that you said that? A. Yes, I referred to that man that used to go with me.

Q. Do you remember when you were referring to some of your men in the department, Manning, Pacetta, Connolly, Mellon, "between seven and eight, I and a friend went to Mr. Alba's." Do you remember that you said that? A. Yes.

Q. Of course you had no reason for trying to conceal from this jury that the man that you said all along was your friend, was your partner, had you? A. No, I did not try to hide that. I considered him as a friend of mine also, because we ate together and we eat together. I see him at times.

Q. I show you a photograph, Mr. Napolitano, and ask you whether that correctly represents the conditions at 138 Union Street on January 14th and 16th of this year? A. No, there is a glass broken here (indicating). Yes, this is the very house. This is the entrance (indicating the door). Turn to your right here is the kitchen and then (indicating to the window where it shows the glass is broken), is the place where the stuff was produced.

Q. And that window indicates the place where the glass was broken by a bullet, doesn't it?

Mr. Brancato: I object to the bullet part.

Mr. Kesselman: If he does not know, Mr. Brancato, he can say that.

A. I don't know that.

[fol. 92] By Mr. Kesselman:

Q. Were you in that room there which is indicated by a broken glass at the time the bullet was fired?

Mr. Brancato: I object to that; there is no evidence of a bullet being fired.

Mr. Kesselman: He said that he heard a shot fired.

Mr. Brancato: Not a bullet.

Mr. Kesselman: I did not know. I thought a shot and a bullet was the same thing.

A. I was in the room, yes.

By Mr. Kesselman:

Q. Which room, mark it on the picture where you were at the time that you heard the shot fired? A. I was here (indicating) between the kitchen——

Q. (Interrupting.) Tell him, Mr. Interpreter, to mark with a lead pencil, the room in which he was at the time he heard the shot fired? A. Between the kitchen——

Mr. Brancato: If the Court please, will you please instruct the interpreter to tell this witness that the witness shall listen to the question put to him by the interpreter and answer no more than that.

The Court: Yes, everything that the witness says must be repeated by you, Mr. Interpreter.

The Interpreter: I repeat everything, your Honor.

The Court: Pardon me, you do not. You sometimes answer without repeating to the stenographer what he says. That must not [fol. 93] be done. Everything he says must go into the record and then any reply that you make to him may go into the record.

Give the witness the picture and let the witness mark on it where he says he was.

A. I heard a shot; I don't know whether it was a revolver or not. I was standing here (indicating with a pencil). There was a door there (indicating). I was standing between these two windows.

Mr. Brancato: I ask that the entire answer be stricken out and let him answer the question as put to him by defendant's counsel.

Mr. Kesselman: There is a great amount of argument. I simply asked him to indicate on that picture what room he was in at the time that he heard the shot fired.

By the Court:

Q. Does the mark which you have made on the picture indicate the room in which you were when you heard the shot fired? I wonder if you understood what I said? A. (By the Interpreter.) I did.

The Court: Apparently you paid no attention to it at all. Be good enough——

Mr. Brancato: I think it is the witness's fault.

The Court: The Court will strike everything from the record since the Court's last question. The Court will ask the witness, Does the mark which you have made on the picture indicate the [fol. 94] room in which you were when the shot was fired? Be good enough to ask that question and repeat what he says.

A. Yes, I believe so.

Mr. Kesselman: I offer this photograph in evidence.

Mr. Brancato: One moment. I think I have a right to ask when this photograph was taken.

Mr. Price: He says it is a correct representation.

The Court: If you want to ask him when the picture was taken, ask him.

Mr. Kesselman: He has already answered that it correctly represents the conditions there.

The Court: I think in view of that answer, Mr. Brancato, the photograph might go in evidence.

Mr. Brancato: One very material point in the photograph, is, can you tell us, Mr. Napolitano, whether at the time that you were in that room and paying the money for those narcotics, Monday night, whether or not there were any curtains or stained glass in that window?

Mr. Price: Wait a minute. I object to it on the ground that the witness testified——

The Court: It has nothing to do with it at the present time, as far as the photograph going in evidence is concerned.

Mr. Brancato: That is very important; if the window does not show—

The Court: You may ask him on re-direct.

Mr. Kesselman: My only object in getting the photograph in evidence [fol. 95] is that I want the Court and jury to understand just where this man claims he was standing at that time.

Mr. Brancato: With that, I have no objection. The picture shows something that may not be there at all.

Mr. Kesselman: We will come to that later on.

(The picture is received and marked in evidence Defendant's Exhibit A.)

By Mr. Kesselman:

Q. Mr. Napolitano, on this defendant's exhibit, you have made a cross, and that indicates the place where you were seated at the time the shot was fired, is that correct? A. I was outside—I was inside—I was not outside, so I don't know anything about the shot or where it came from.

Q. Were you in the room represented—shown by the first window (indicating photograph)? A. That is the kitchen, yes.

Q. That is the room where you were seated at the time you heard the shot fired? A. No, sir; I was this way more, more inside.

Q. Now, there are two rooms there, aren't there? A. Yes, I was between the first and second room.

Q. You are either in one room or the other, aren't you? A. When I was between—I don't know, I am near the door—I was between that room and the other, the kitchen and the other.

Q. You see here that there are two windows, Mr. Napolitano? A. Yes, sir.

Q. And between those two windows there is a partition which separates the two rooms? A. I was in the inside.

[fol. 96] Q. There is a partition, there is a room there represented by this window, isn't there? A. Yes, sir.

Q. There is also a room there which is indicated by the second window? A. That is the second room.

Q. There is a partition between the two rooms there? A. Yes, sir.

Q. Now, which room were you in? A. I was between this one and the other one. I was between the first and second room. I was right at the doorway, leading into the next room.

Q. You were at the doorway which leads from the first room into the second room; is that correct? A. This room and the other one (indicating).

Q. When you came into the second room you saw certain packages on the table; is that correct? A. Yes, sir.

Q. You did not know who brought them there? A. No, sir.

Q. You did not see anybody in particular put them on the table? A. No, sir.

Q. Did you see the five defendants go into another room, into the third room of this apartment? A. Yes, another room on this side. (Indicating.)

Q. Then there is a room immediately back of this room which is indicated by a broken glass? A. I only saw two rooms there; I don't know.

Q. Do you know how many three rooms are? A. There are two on the outside; two on the inside; rooms four.

Q. There are four rooms in this apartment? A. Four, yes, sir. Two rooms on this side and two on the other side.

[fol. 97] Q. In which room were those various packages placed?

A. The room immediately next to the kitchen, which faced the street.

Q. Would that be the room which is indicated by the broken glass?

A. I believe that is the room.

Q. Your fellow officers, they broke into the door which leads directly from the street, didn't they?

A. No, sir.

Q. Did they break the door in order to gain admittance, entrance to the apartment?

A. Not that front door; another door.

Q. As you come from the street into the hallway and you walk a few feet there is a door which leads into Alba's apartment?

A. Yes.

Q. And that is the door which was broken down by your fellow officers, isn't it?

A. Yes, sir.

Q. Now, where were you at the time your fellow officers broke in?

A. In the room where the stuff was.

Q. How many of your fellow officers had revolvers in their hands at that time?

A. One or two; I don't know.

Q. It looked like a wild west show, didn't it, when they came in?

Mr. Brancato: I object to that; there may have been good cause for it.

Mr. Kesselman: If you have any objection you make it without comments. If you have any objection, make it to his Honor.

Mr. Brancato: I object to the characterization that it was like a wild west show.

The Court: I think the term "Wild West Show" is pretty generally understood to mean some exhibition in which shooting is a frequent occurrence, and with that understanding the Court will allow the question.

[fol. 98] Mr. Brancato: If the Court please—

Mr. Kesselman: I will withdraw it then, Mr. Brancato.

Mr. Brancato: The witness may not know.

Mr. Kesselman: All right. He knows a great deal more than we think he does.

By Mr. Kesselman:

Q. Have you worked on narcotic cases with Nunzio other than this one?

A. No, sir.

Q. He was the stool pigeon for your department, wasn't he?

A. Who?

Q. Well, who are you talking about?

A. I want to know from you whether you are referring to me or whom you are referring to?

Q. Well, if it refers to yourself answer the question.

Mr. Brancato: I object to that, if the Court please. I think he should be asked——

Mr. Kesselman: I just asked him a minute ago about Nunzio. He knows who I was talking about.

Mr. Brancato: I think the witness has a right to know who you are talking about.

The Court: Make that clear.

Mr. Kesselman: I did ask him, Judge.

The Court: If there is any possible question, make it perfectly plain.

By Mr. Kesselman:

Q. Have you been employed by the Treasury Department, the Narcotic Division, regularly during the last two years?

A. Yes, at times, yes.

Q. I asked you if you are employed there regularly?

A. No, not continuously.

Q. You just had special jobs occasionally?

A. Yes, when there is work, they give me work.

[fol. 99] Q. That is, you do not get a certain specified salary per month, do you?

A. No, when I work seven or eight or nine days, then whatever it is, I get paid that way.

Q. Nunzio works there occasionally also?

A. That I don't know.

Q. How frequently have you seen him at the office when you have been there, in the last two years?

A. Saw him two or three times.

Q. Nunzio is a stool pigeon for your department, isn't he?

A. I don't know anything about that.

Q. If you knew him to be a stool pigeon, would you come here and tell the jury about it?

A. What could I say about that? I cannot say nothing about that.

Mr. Kesselman: That is all.

The Court: Any cross examination, Mr. Wackerman?

Mr. Kesselman: I have just a few more questions, please.

By Mr. Kesselman:

Q. Did you see pastry around Mr. Alba's apartment on those different occasions that you were there?

A. No, sir.

Q. Do you know what pastry is?

A. No, sir; I never saw him.

Q. Do you know what the word "dulce" means in Italian?

A. Yes.

Q. Did you see any of it there that day?

A. I did not.

Q. Did not you see this man working, making some dulce at that time?

A. No, sir.

Mr. Kesselman: That is all.

[fol. 100] Mr. Wackerman: Am I correct in my understanding that the defendants represented by me are still preserving their rights to strike out this witness's testimony.

The Court: Yes, that is understood.

Mr. Wackerman: That is understood, unless it is connected up.

The Court: Yes.

Mr. Wackerman: No cross examination.

Redirect examination by Mr. Brancato:

Q. Now, this apartment of Alba's you said, consisted of four rooms; is that right?

A. Yes, sir; four.

Q. The kitchen?

A. The kitchen.

Q. Next to the kitchen there is another room, is there?

A. There are four rooms.

Q. Answer the questions, please.

A. Yes.

Q. There is another room next to the kitchen?

A. Yes, sir.

Q. Is that the room where the table was with the three or four packages?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. Behind the kitchen is there another room?

A. One more room on this side.

Q. Behind the kitchen?

A. No, behind—in front.

Q. (To the interpreter.) You should ask him that.

A. Yes, there is.

Q. Behind the room where the table is, there is another room; that is the fourth room?

A. Yes.

Q. Please don't answer a question until you understand it. Now, is there a window in the kitchen?

A. Yes.

Q. And is there a window in the next room?

A. Yes, sir.

Q. The door that leads from the hall into the kitchen, is that near the space that leads from the kitchen into the next room? [fol. 101] A. Yes, it goes from the first to the second room on that side.

Q. Now, you said before you did not know whether there was a door leading from the kitchen into the next room; is that right?

A. There is a space there, an opening there.

Q. There is a space there for a door, is that right?

A. Yes, there is.

Q. You can go through there, walk through?

A. Yes.

Q. But you don't know whether there is a door, an actual physical door there?

A. No, sir.

Q. Now, do you remember when you testified that you and your friend Nunzio, Centorino and Alba left Alba's house and went outside; do you remember that?

A. What date are you referring to?

Q. Didn't you testify before that you and Alba and Centorino and your friend left Alba's house; you went outside and that then you came back and Centorino went away; do you remember that incident?

A. Yes.

Q. Now did you and Alba and your friend go back to Alba's house.

Mr. Price: I think that is all in the record on both direct examination and cross examination and is not proper re-direct examination.

(The last two questions and one answer were repeated by the reporter.)

The Court: He may answer that question.

Mr. Price: I except.

(The last question was repeated by the reporter.)

[fol. 102] A. Yes.

By Mr. Brancato:

Q. At the time you were standing outside Alba's house, before you came back, did you see any of the agents around?

A. Yes, I did.

Q. Whom did you see?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial.

Mr. Brancato: All right, I will withdraw my question on the objection.

By Mr. Brancato:

Q. When did you see the agents again after that?

Mr. Price: I object to it on the ground that it is not proper re-direct examination.

The Court: Objection sustained.

Mr. Brancato: He brought it out, if the Court please, it is certainly proper re-direct. It was brought out on cross examination. He was asked about that for half an hour, as to when he saw the agents. Does the ruling stand, if the Court please?

The Court: Yes, the ruling stands.

Mr. Brancato: All right; that is all.

Mr. Price: That is all.

[fol. 103] COLEMAN MANNING, called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. What is your business?

A. Internal Revenue Inspector.

Q. Attached to what division?

A. The Internal Revenue Division, New York Division.

Q. Narcotic Squad, isn't it?

A. Yes, sir.

Q. How long have you been in that work?

A. Three years.

Q. Now, do you know these defendants, the five of them?

A. I do.

Q. Were you one of the arresting officers, on January 18th?

A. I was.

Q. Or 16th?

A. I was.

The Court: What date, the 16th?

Mr. Brancato: The 16th.

By Mr. Brancato:

Q. How many other agents were there at the time of the arrest?

A. Seven, I believe.

Q. Give us their names, as well as you can remember.

A. Officer Oyler, Pacetta, McCormick, Mellon, Connolly.

The Court: Now, we will take an adjournment for the day, continuing tomorrow morning at 10 o'clock, not 10:30 o'clock. The defendants are continued on their bail.

[fol. 104]

New York, March 14, 1922—10 o'clock a. m.

Before Garvin, J., and a Jury

Appearances: (Same as heretofore.)

COLEMAN MANNING resumes the stand.

Direct examination by Mr. Brancato (continued):

Q. Now, did you see the defendant Stephen Alba before the 16th day of January?

A. I did.

Q. And on what day did you see him?

A. On the 14th.

Q. That was Saturday?

A. It was.

Q. About what time of the day was it?

A. Eight o'clock at night.

Q. Just tell us where and under what circumstances you saw him?

A. At 138 Union Street, where Napolitano went to receive the sample of narcotics.

Mr. Price: I move to strike that out.

The Court: Motion granted. Tell us where you saw him.

A. At 138 Union Street.

By Mr. Brancato:

Q. Is that where he lives?

A. Yes, sir.

Q. That is the same place where the arrest was made of the five defendants on the following Monday?

A. It is.

Q. You did not go inside on that Saturday?

A. No, sir.

[fol. 105] Q. Did you see him on that Saturday?

A. I did.

Q. Where?

A. In the house.

Q. Just tell us how you saw him?

A. By passing and looking into the window.

Q. I show you Defendant's Exhibit A, which is a photograph purporting to represent the appearance of the premises, 138 Union Street, and ask you to point out the window in that photograph that is in the kitchen of those premises.

Mr. Price: I suggest that the two windows, for the purposes of the record, one be marked "A" and one be marked "B." Then he can indicate which window it is. If he indicates otherwise, it does not mean anything for the purposes of the record.

Mr. Brancato: All right.

By Mr. Brancato:

Q. Mark the window "A" that is in the kitchen of those premises?

A. The kitchen?

Q. The kitchen.

A. Yes, sir. (Witness does as requested.)

Q. Mark the window "B" which is in the room next to the kitchen?

A. Yes. (Witness does as requested.)

Mr. Price: You can let the jury see it.

Mr. Brancato: Yes, sir. The kitchen window is "A" and the next room is "B."

By Mr. Brancato:

Q. In what room was it that you say that you saw the defendant Alba on Saturday night?

A. On the 14th?

Q. Yes, in what room?

A. In the kitchen.

Q. That is indicated by the letter "A"?

A. Yes, sir.

[fol. 106] By the Court:

Q. In what part of the house is the kitchen?

A. Right near the doorway.

Q. In the front part of the house?

A. Yes, sir.

By Mr. Brancato:

Q. The kitchen of those premises as indicated by the letter "A," does that face Union Street?

A. Yes.

Q. And the room next to that indicated by the letter "B" also faces Union Street?

A. It does.

Q. Now, is there any room immediately behind the kitchen? A. There is.

Q. And is there also a room immediately behind the room next to the kitchen?

A. There is.

Q. So that you practically have one large room divided off into four rooms?

A. Yes, sir.

Q. At the time that you saw the defendant Alba in this kitchen on Saturday night, the 14th, who was in the room with him, as far as you could see?

A. Napolitano.

Q. Anybody else there?

A. I could not see.

Q. How long was Napolitano in that room with Alba?

A. Why, I should judge twenty minutes or more.

Q. Had you gone to those premises, in the vicinity of those premises, with Napolitano?

A. I did.

Q. Who else was with you at the time you went there?

A. Officers Mellon, Connolly, Pacetta and myself.

Q. Was there a man named Nunzio?

A. Yes.

Mr. Price: I submit that is improper and I move to strike out the answer. He has just given us who was there. He has no right to lead this witness.

[fol. 107] The Court: Motion granted.

Mr. Brancato: If the Court please, where he has stated the number of people——

The Court: The Court holds that you have not exhausted his recollection as to who was there and you must do so.

By Mr. Brancato:

Q. Was there anybody else besides you men, that is, you agents, Mellon, yourself, and who are the other two?

A. Connolly and Pacetta.

Q. Anybody else besides your four men?

A. Positively.

Q. Who?

A. Nunzio.

Q. Who else?

A. Napolitano.

Q. Where did you come from before you got there?

A. From the office, New York City.

Q. By "the office" you mean the Narcotic Office?

A. Yes, sir.

Q. How did you get there?

A. Went to the Brooklyn Bridge and took a Court Street car to Court and Union Street-; got off at Union Street and walked down 138.

Q. After Napolitano came out of 138 Union Street; that is, Alba's residence there, did you speak with Napolitano?

A. I did.

Q. Did he show you anything?

A. He did.

Mr. Price: I object to it on the ground that it is incompetent, relevant and immaterial and not binding on the defendants.

The Court: Objection sustained.

By Mr. Brancato:

Q. I show you Government's Exhibits Nos. 1 and 2, for identification and ask you if you have seen them before this?

[fol. 108] Mr. Price: Wait a minute. I object to it on the ground that it is incompetent, irrelevant and immaterial and not binding on the defendants.

The Court: Objection overruled.

Mr. Price: I except. I submit that under your Honor's ruling the answer will have to be yes or no.

The Court: Yes, you must answer yes or no, whether you have seen them before.

A. Yes.

By Mr. Brancato:

Q. When?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and not binding on the defendants.

The Court: These two exhibits, which have been marked for identification, have been testified to by a Government witness to have been received from one of the defendants?

Mr. Brancato: Yes, sir.

The Court: Objection overruled.

Mr. Price: I except. It is not binding on the defendant Centorino.

The Court: Not alone binding on that defendant or any of the other defendants, except Alba, unless they are connected with the conspiracy by the evidence produced.

By Mr. Brancato:

Q. When?

A. On January 14th.

Q. Who showed them to you, if anybody?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial, and not binding on the defendants.

[fol. 109] The Court: Objection overruled.

Mr. Price: Exception.

A. I saw Pacetta — Napolitano hand them to Pacetta in my presence.

By Mr. Brancato:

Q. Where?

A. On the corner of Hicks Street; that is half a block up.

Q. Hicks and where?

A. And Union Street.

Q. 138 Union Street is about how far from Hicks Street as well as you can remember, approximately?

A. Half a block; not quite half a block.

Q. About how many feet would you say?

A. One hundred and fifty.

Q. Who was there at the time?

A. What?

Q. Who was at the corner at the time these exhibits were shown to you?

Mr. Price: I object to it.

A. The same officers.

Mr. Price: One moment. I object to it on the ground that it is incompetent, irrelevant and immaterial and I move to strike out the answer.

The Court: Objection overruled.

Mr. Price: I except.

A. The same officers and Nunzio.

By Mr. Brancato:

Q. Did you again visit the premises, 138 Union Street?

A. I did.

Q. When?

A. On January 16th.

Q. That was Monday?

A. Yes, sir.

Q. About what time?

A. About eight o'clock in the evening.

[fol. 110] Q. Did anybody go with you?

A. Yes, sir.

Q. Just tell us the names of all the officers who went with you to this address?

A. Officers Pacetta, McCormick, Mellon, Connolly, Oyler, Moog.

Q. Who else?

A. That is all the officers.

Q. That is all the officers?

A. Yes, sir.

Q. Were there any other men besides the officers?

A. There was.

Q. Who were they?

A. Napolitano and Nunzio.

Q. Before you got to the premises where had you been?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Brancato:

Q. Did you all get to Union Street together?

A. Yes, sir.

Q. Union Street and where did you separate?

The Court: Just a minute, Marshal. Be very careful that no witnesses enter the room, please.

(The last question was repeated by the reporter.)

A. I don't know the streets this side of Hicks Street, not Columbia; I mean the other street.

Br. Mr. Brancato:

Q. You mean towards Court Street?

A. Yes, between Court and Hicks Street, if that is the street near Hicks street.

By Mr. Price:

Q. Court, Clinton, Henry and Hicks, isn't it?

A. I don't know.

[fol. 111] By Mr. Brancato:

Q. There are how many blocks from Court Street to Hicks Street, if you remember?

A. I should judge four.

Q. About four?

A. Yes, sir; about four.

Q. Did you come over by car?

A. Trolley car.

Q. And what car was it?

A. The Court Street car.

Q. You got off at Union Street?

A. Yes, sir.

Q. Did you all get off together?

A. Yes, sir.

Q. Now, did you go down together from Court Street until you got to Hicks Street or what did you do?

A. We followed there—we split up right there when we got off the car; that is, we went in bunches, two ahead and two opposite, and so on, until we got down to Hicks Street. Napolitano and Nunzio went ahead of us. We waited in the back until they got to the door and then we segregated around the neighborhood of that block.

Q. And you saw Napolitano go in to 138?

A. I did.

Q. With Nunzio?

A. I did.

Q. Do you remember the time of the arrest?

A. I do.

Q. Now, just tell us, if you remember, about how long a time elapsed from the time that Napolitano and Nunzio first went in to 138 Union Street on Monday night until the actual arrest?

A. I should judge about an hour.

Q. During that time, from the time that you saw the two men, Nunzio and Napolitano go in 138 Union Street, till the arrest was made, did you see those two men, Napolitano and Nunzio?

A. Yes.

Q. Tell us where?

A. In front of the door.

[fol. 112] Q. When you say "in front of the door," just what do you mean?

A. In front of number 138. They went to the gutter.

Q. Were they in the street or on the sidewalk?

A. Both.

Q. Who was with Napolitano and Nunzio at the time that you say that you saw them?

Mr. Price: I submit from now on that the witness be permitted to testify to everything that happened, and not be led by Mr. Brancato with suggestive leading.

The Court: I think you had better, Mr. Brancato, have the witness state what occurred.

Mr. Brancato: All right.

By Mr. Brancato:

Q. After the period that you saw these two men, Nunzio and Napolitano, as you describe, enter 138, tell us just what took place, who was with them, what was done, as far as you could see; all about it?

A. Alba, and I cannot think of that man's name (indicating).

Q. Which one?

A. Centory.

Q. Centorino?

A. Centorino. Alba and Centorino, Nunzio and Napolitano came out to the door and had a talk. Centorino and Alba stood at the gutter, got into the gutter and they were talking and moving down a little. I should judge about four or five minutes they were talking out there and finally Nunzio and Napolitano went back to the house and Centorino left and went across the street down toward Columbia. Officer Oyler and I followed.

Q. Followed whom?

A. What is that?

[fol. 113] Q. Whom did you follow?

A. Centorino. He walked to number 172. I believe that is the number. I am not positive of it.

By Mr. Price:

Q. 172 what?

A. 172 Columbia Street. He came down and crossed the street and went down to number 167 Columbia Street, which seemed to be like a grocery store. He went in there and remained about five or ten minutes, and came out with Agnello.

Mr. Price: I move that you strike that out as a conclusion, who he came out with. Let him state——

Mr. Brancato: He came out with some people, he is going to say.

Mr. Price: That is his conclusion. I have no objection if he states he came out or another man came out.

The Court: All right, testify that way. Did anybody else come out after this man that you have just described?

The Witness: Yes, four men.

By Mr. Brancato:

Q. Who are they?

A. Yes, sir.

Q. Are they in court now?

A. Yes, sir.

Q. Point them out?

A. The first four, Centorino, Pace and the two Agnello boys.

Q. Centorino, Pace and the two Agnellos?

A. Yes, sir.

Q. Those four came out together?

A. Yes, sir.

Q. From what number?

Mr. Price: I move to strike out "came out together" on the ground that it is a conclusion. That is Mr. Brancato's testimony.

[fol. 114] By the Court:

Q. Just at the same time, you mean?

A. Yes, sir.

By Mr. Brancato:

Q. How far apart were they when they came out?

A. Together.

Mr. Price: I move to strike that out on the ground that it is a conclusion.

The Court: Motion granted. Just state the number of inches or feet they were apart, as near as you can?

A. About a foot apart.

By Mr. Brancato:

Q. What were they doing?

A. Talking and walking toward Columbia and Union.

Q. When you say talking, to whom were they talking?

A. All together.

Q. Among themselves?

A. Yes, sir.

Q. How long did Centorino stay in this grocery store at number 167 Columbia Street before he came out with the other defendants, as you have described?

A. About five or ten minutes.

Q. What did you see them do from the time that they left 167 Columbia Street, the grocery store?

A. They came back to No. 138 Union Street and entered.

Q. Entered 138 Union Street?

A. They did.

Q. What did you do then?

A. As soon as they got in, I went to the window; I don't know what room to call it; it is not the kitchen, it is the other window. I think it is marked "B."

Q. Be sure; look at the photograph. Be sure; you had better have the photograph.

A. "B."

[fol. 115] Q. Hold it in your hand so you can refer to it. Just tell us what you did?

A. I looked into the window; I saw Alba come over to the table and lay two packages down on the table and with that I told the other officers to go in.

Mr. Price: No, never mind what you told anybody else. I move to strike that out.

The Court: Yes.

By Mr. Brancato:

Q. Through what window were you looking?

Mr. Price: He said "B."

A. Through "B" window.

By Mr. Brancato:

Q. Now, will you please tell us whom you saw in that room "B" at the time you looked through the window?

A. I saw Pace, Alba, Agnello and Nunzio.

Q. Which Agnello was it?

A. The bigger one.

Q. The older one?

A. The older one.

Q. Thomas?

A. (No answer.)

Q. What was each doing so far as you could see it?

A. I was paying particular attention to Alba.

Q. Did you see any articles of furniture in that room?

A. I did.

Q. What articles of furniture?

A. A table.

Q. Anything else?

A. That is all I could see in there.

Q. Will you please describe that table?

A. It is a saloon table.

Q. What shape is it?

A. Round.

Q. What was the relations of these men that you have mentioned, what was the nearness or distance with relation to the table of these [fol. 116] men that you have just mentioned?

A. The distance from the table?

Q. Yes.

A. About two feet.

Q. Were they in line or were they around the table or what?

A. The other men were off about two or three feet away from the table and Alba came to the table.

Q. What did you see Alba do?

Mr. Wackerman: So far as anything happening in the room is concerned, I am objecting to it merely on behalf of Frank Agnello.

The Court: It is received against him in the event that the conspiracy is proven and proof is submitted that he is a party to it, as stated in the indictment.

Mr. Price: I assume that is all subject to our motion.

The Court: Very well; it is so ordered.

A. I saw Alba lay two packages on the table.

By Mr. Brancato:

Q. Can you tell us the color of the packages or the shape of the packages?

A. Dark purple.

Q. I show you these packages marked Government's Exhibit 3 for Identification, and ask you if you can tell us whether or not the packages you saw Alba put on the table were similar to the packages now marked for identification?

Mr. Price: Wait a minute. I object to it on the ground that it is incompetent, irrelevant and immaterial and calls for a conclusion.

The Court: Is that pressed?

Mr. Brancato: Yes.

The Court: Objection sustained.

[fol. 117] By Mr. Brancato:

Q. Will you please describe as well as you can the packages which you say you saw Alba put on the table. Describe them as to color, size, quality of material, and so forth, as well as you can?

A. They were purple packages. Beyond that I cannot describe anything more but just the purple package, because we handle that quite often and I figured that is the stuff.

Q. What size package is that?

Mr. Price: I move to strike out everything after "purple package."

The Court: Motion granted.

By Mr. Brancato:

Q. What size was the package?

Mr. Price: He just said he could not say.

Mr. Brancato: I did not hear him say that.

The Witness: I did.

By Mr. Brancato:

Q. You cannot say?

A. No.

Q. Now, what else did you see immediately after you saw Alba place those packages on the table?

A. I saw Pace make a move to the door.

Q. Which door?

A. The center door leading from one room to the other.

Q. When you say the center door, leading from one room to the other, what do you mean?

Mr. Price: Refer to them on your Exhibit by A and B.

A. From B room to A room.

By Mr. Brancato:

Q. Anything else that you saw?

A. I saw nothing else at that moment.

[fol. 118] Q. Go on and tell us what happened, in detail as far as you saw and heard anything that happened from there on.

A. I said to the men at the door, "All right."

Q. Do not—

Mr. Price (interrupting): I move to strike that out. This witness ought to know better.

Mr. Brancato: I object to counsel's qualification of "knowing better."

By Mr. Brancato:

Q. Just tell us what you did and what you saw but do not tell us what you said.

A. I shot through the window of "B" room, and went to "A" room and went in through the window.

Q. At the time that you fired the shot through "B" window and then went in through "A" window, where were the other agents and what did they do?

A. They were at the front door and when I got into the window of "A" room they were in the room also.

Q. That is "A" room, the kitchen?

A. Yes, sir.

Q. Now, you fired the shot through "B" window; what did you fire it with?

A. With a revolver.

Q. A service pistol?

A. Yes, sir.

Q. The windows in "A" room and "B" room, are they one whole window or are they half windows or quarter windows, that you can raise and lower? Look at this—

A. Yes, sir.

Q. Look at the picture and see if that is the correct shape of the window?

A. Yes.

Q. Which part of the window did you fire the shot at?

A. Which part of the window?

Q. The upper window or the lower window?

A. The upper window.

Q. The upper window?

A. Positively.

[fol. 119] Q. What happened to the glass?

A. It smashed it.

Q. You say that it smashed it; can you tell us if any of the glass remained in the window?

A. Very little.

Q. Then what happened? Now, go on and tell us.

A. I went in through "A" window.

Mr. Price: You are already in there now.

A. I am talking about the shooting through the window.

By Mr. Brancato:

Q. Go ahead.

A. I went through "A" window and the men was in a turmoil in there; fighting to get out of there.

Mr. Price: I move to strike that out as a conclusion.

The Court: "Fighting to get out of there may stand only as to the word "fighting." You used the word turmoil?"

The Witness: Yes.

By Mr. Brancato:

Q. You say that they were fighting; just what else were they doing besides fighting?

A. That is all.

Q. Anybody hurt?

Mr. Price: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Brancato:

Q. Now, after the fighting was over, just tell us what you and the [fol. 120] other officers did; what you found, tell us all about that?

A. We put them up against the wall and searched each and every one of them.

Mr. Price: Wait a minute. I object to anything except that he found something connected with this case.

The Court: Yes, just tell us what you found, without going into details.

Mr. Price: Please instruct the witness that he is not to testify except if they found some narcotics.

The Court: Yes, tell us anything in the way of narcotics that you found.

A. We did, we found the narcotics.

Mr. Brancato: I would have had to ask a leading question.

The Court: It is all right. You are excused for not doing it.

By Mr. Brancato:

Q. Just tell us what you found in the way of narcotics?

Mr. Wackerman: If the Court please, on behalf of the defendant Frank Agnello, if Mr. Brancato will allow me to make my motions without commenting on them—I am objecting to anything on behalf of this defendant which is found in the place, on the ground that the agents had no right to be there.

The Court: Objection overruled.

Mr. Wackerman: Exception.

By Mr. Brancato:

Q. Go on and tell us what you did after that, after you lined these men up against the wall?

[fol. 121] A. Searched them and found the narcotics and the marked money on Alba.

Q. When you say "narcotics" were those narcotics in packages?

A. They were.

Mr. Price: I move to strike out the characterization of them.

Mr. Brancato: You have asked for it yourself.

Mr. Price: I have no objection to having him state.

The Court: That motion is granted. You don't want them to use the word "narcotics."

Mr. Price: They found packages.

The Court: Yes, describe anything that was found, that you think was narcotics, without using the word, tell us what it was?

The Witness: We found some packages.

By Mr. Brancato:

Q. Just tell us where the packages were found and on whom they were found, if any?

A. On Frank Agnello, the younger Agnello.

Q. You found how many packages?

A. I don't know.

Mr. Wackerman: If the Court please, I am objecting to anything that he found on Frank Agnello on two grounds, first, the seizure of anything that they found as the search was illegal and the second ground, Frank Agnello is not charged with possession.

Mr. Brancato: I am not charging him with possession, but a sale made there.

The Court: Objection overruled.

Mr. Wasserman: Exception.

A. Yes.

Q. Which part of the window did you fire the shot at?

A. Which part of the window?

Q. The upper window or the lower window?

A. The upper window.

Q. The upper window?

A. Positively.

[fol. 119] Q. What happened to the glass?

A. It smashed it.

Q. You say that it smashed it; can you tell us if any of the glass remained in the window?

A. Very little.

Q. Then what happened? Now, go on and tell us.

A. I went in through "A" window.

Mr. Price: You are already in there now.

A. I am talking about the shooting through the window.

By Mr. Brancato:

Q. Go ahead.

A. I went through "A" window and the men was in a turmoil in there; fighting to get out of there.

Mr. Price: I move to strike that out as a conclusion.

The Court: "Fighting to get out of there may stand only as to the word "fighting." You used the word turmoil?"

The Witness: Yes.

By Mr. Brancato:

Q. You say that they were fighting; just what else were they doing besides fighting?

A. That is all.

Q. Anybody hurt?

Mr. Price: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Brancato:

Q. Now, after the fighting was over, just tell us what you and the [fol. 120] other officers did; what you found, tell us all about that?

A. We put them up against the wall and searched each and every one of them.

Mr. Price: Wait a minute. I object to anything except that he found something connected with this case.

The Court: Yes, just tell us what you found, without going into details.

Mr. Price: Please instruct the witness that he is not to testify except if they found some narcotics.

The Court: Yes, tell us anything in the way of narcotics that you found.

A. We did, we found the narcotics.

Mr. Brancato: I would have had to ask a leading question.

The Court: It is all right. You are excused for not doing it.

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The Court: Objection overruled.

Mr. Wackerman: Exception.

By Mr. Brancato:

Q. Go on and tell us what you did after that, after you lined these men up against the wall?

[fol. 121] A. Searched them and found the narcotics and the marked money on Alba.

Q. When you say "narcotics" were those narcotics in packages?

A. They were.

Mr. Price: I move to strike out the characterization of them.

Mr. Brancato: You have asked for it yourself.

Mr. Price: I have no objection to having him state.

The Court: That motion is granted. You don't want them to use the word "narcotics."

Mr. Price: They found packages.

The Court: Yes, describe anything that was found, that you think was narcotics, without using the word, tell us what it was?

The Witness: We found some packages.

By Mr. Brancato:

Q. Just tell us where the packages were found and on whom they were found, if any?

A. On Frank Agnello, the younger Agnello.

Q. You found how many packages?

A. I don't know.

Mr. Wackerman: If the Court please, I am objecting to anything that he found on Frank Agnello on two grounds, first, the seizure of anything that they found as the search was illegal and the second ground, Frank Agnello is not charged with possession.

Mr. Brancato: I am not charging him with possession, but a sale made there.

The Court: Objection overruled.

Mr. Wasserman: Exception.

[fol. 122] By Mr. Brancato:

Q. You say you don't know how many packages were found on Frank Agnello?

A. There was more than one. I saw the one in the side of the coat but I don't know how many. I saw one.

Q. Where were those packages found?

A. One was found close to the bed.

Q. How about the others or some others?

A. I don't know who took them.

Q. Did you see them?

A. I did.

Q. Where?

A. On the table.

Q. You say you don't know who took them; do you mean which agent actually took them off the table?

A. That I don't know.

Q. You don't know?

A. No.

Q. What particular work were you doing at the time the search was going on?

A. I searched, the same as the rest of the officers.

Q. Searched individuals?

A. Yes, sir.

Q. After searching the individuals, and you found the packages, as you have described, did you mark any of these packages with your initials?

A. I did.

Q. I show you Government's Exhibit 3 for identification, 4 for identification, 5, 6, 7 and 8, and ask you to say if your initials appear on those packages?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial, the packages being the best evidence.

The Court: Objection overruled.

Mr. Price: I except.

A. (Witness examining packages.) Yes, sir.

[fol. 123] By Mr. Brancato:

Q. Did you see any of the other agents sign those packages?

Mr. Price: I object on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: Exception. I move to strike out the answer.

The Court: Motion denied.

Mr. Price: Exception.

By Mr. Brancato:

Q. After those packages had been collected, what became of them?

A. One was sent to the chemist.

Q. No, before they got there. We are still at No. 138?

A. Officer Connolly had charge of them.

Q. Did he take them all?

A. Yes, sir.

Q. Now, these men were placed under arrest, were they?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Now, please tell us what you did from the moment that those men were placed under arrest, the searching was done, and the packages taken by Connolly, what further took place, what happened, where did you go?

A. We took the older Agnello——

Q. (Interrupting.) Thomas Agnello?

A. (Witness continuing:)—into the other room and questioned him.

Q. Which room?

A. The one off the kitchen, in back of the kitchen, I should say.

Q. The room in back of the kitchen?

A. Yes, sir.

Q. Was it the room in back of "B"?

A. Yes.

[fol. 124] Q. Or "A," is it?

A. Yes, "A" room.

Q. Which room is it now?

A. "A" room. (Witness looks at picture.) And he asked—we asked him where he got the stuff from?

Q. Who took him in there?

A. Officer Oyler and myself.

Mr. Price: I object to it as incompetent, irrelevant and immaterial, and not binding on the defendants.

The Court: Yes, objection sustained, who took him in there?

By Mr. Brancato:

Q. Who was he with?

By the Court:

Q. Who else was present?

A. Officer Oyler and myself.

By Mr. Brancato:

Q. Was there anybody else in the room besides Officer Oyler, yourself and Thomas Agnello, the defendant?

A. There was officers coming in and out.

Q. Did you have a talk with Agnello, Thomas?

A. I did.

Mr. Price: I object to it on the ground—all right; the answer is there.

Mr. Brancato: Strike out the answer for the present until we see what the objection is. I want to be fair.

Mr. Price: No, that answer may stand, that he had a talk with them.

By Mr. Brancato:

Q. What was said by Thomas Agnello?

[fol. 125] Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and not binding on the defendant Centorino, the conspiracy, if any, having terminated; not in his presence or hearing.

Mr. Brancato: They are charged not only with the conspiracy but with the actual sale and what Agnello said may be binding as against him.

The Court: Yes, I will receive it only as against Agnello.

Mr. Wackerman: It is only against Thomas Agnello?

The Court: It is only against Thomas Agnello.

By Mr. Brancato:

Q. Tell us what was said by Thomas Agnello?

A. We asked him where he got the packages from and he stated, "Off the ships." So then he said, "Now listen, can I talk business with you?" I said, "Any time." So did Officer Oyler. So he says, "I want to spring Pace, I and Frankie," that is his brother. So we said, "That is impossible." "Well," he said, "what is your price?" And offered two thousand dollars.

Mr. Price: I move to strike that out.

The Court: It is only received as against Thomas Agnello.

Mr. Kesselman: I object to it on the ground that it is a conclusion on the part of the witness. Let him give the conversation if he wants to give it.

The Court: I understood he was.

The Witness: I am giving it.

Mr. Kesselman: The words which he just used nobody used but himself. It is a conclusion that somebody said something.

[fol. 126] The Court: Objection overruled.

Mr. Price: I except.

Mr. Kesselman: Exception.

A. (Continuing:) We told him we wanted to know—

The Court: No, you will have to state who used the words; state what you said and what Oyler said, if anything.

The Witness: Mr. Oyler asked him, told him that he wanted his connections, where these packages were coming from, and he said that he would turn it up; it was coming from the sailors off the ships.

By Mr. Brancato:

Q. How long were you in this room with Thomas Agnello; I mean the room in the back of room "A"?

A. About three or four minutes.

Q. Have you told us substantially the conversation that you had in this room with Thomas Agnello?

A. Positively.

Q. After that what happened? Where did you go?

A. What happened in the room?

Q. No, where did you go?

A. We went from there to 172 Columbia Street.

Q. With whom?

A. Officer Oyler, Moog, myself and Pacetta.

Q. Any of the defendants with you?

A. No, sir.

Q. 172 Columbia Street; is that the same place where you had seen Centorino go a little while before?

Mr. Price: Price: I object to it on the ground that it is incompetent, irrelevant and immaterial; after the termination of the conspiracy and not binding on any of the defendants.

[fol. 127] The Court: Objection overruled.

Mr. Price: I except.

A. It is.

By Mr. Brancato:

Q. What floor did you go to?

A. The top floor.

Q. Whom did you see there, if anyone?

Mr. Kesselman: Objected to on the ground that it is incompetent, irrelevant and immaterial, not binding on any of the defendants, not being in their presence or hearing.

The Court: Objection overruled.

Mr. Kesselman: Exception.

Mr. Price: I make the same objection and on the further ground that it was after the termination of the conspiracy, if any, and therefore not binding on my client, Centorino.

The Court: Objection overruled.

Mr. Price: Exception.

A. Centorino's wife.

By Mr. Brancato:

Q. Did you have a talk with her?

A. Yes.

Q. Then what did you do after having a talk with his wife?

A. Went to 167 Columbia Street.

Q. What part of the premises did you go to there?

A. The store and the back rooms and in the yard.

Q. What kind of a store is it?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial, not binding on the defendants, after the termination of the conspiracy, not binding on my client, Centorino. [fol. 128] The Court: Objection overruled.

Mr. Price: I except.

(The last question was repeated by the reporter.)

A. An Italian grocery store.

By Mr. Brancato:

Q. Is that the same store that you had seen Centorino Pace and the Angello Brothers leave shortly before?

A. It is.

Q. Did you see anybody in the store at the time that you went there?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and after the termination of the conspiracy.

The Court: Objection overruled.

Mr. Price: I except.

A. I did.

Q. Now, tell us what you did in this place?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and not binding on the defendant; after the termination of the conspiracy.

The Court: Of course, it may not be binding upon anybody.

Mr. Brancato: Of course, I am getting up to it, if your Honor please.

The Court: I will take it subject to a motion to strike out.

Mr. Price: I except.

By Mr. Brancato:

Q. Tell us what you did.

[fol. 129] Mr. Price: You may strike it out from the record but you cannot strike it from the minds of the jury.

The Court: Come up here, Mr. Brancato, with counsel, and you can tell the Court, without the jury hearing it, what you propose to prove.

(Court and counsel confer.)

The Court: Objection overruled.

Mr. Price: I except. I object on the further ground that it is not a crime under the Federal law to have anything of this character in the possession of the defendants, on the ground that it may tend

to prove a crime under the State law, which is not the subject matter of this indictment, and on the further ground that the officers had no right to go into this place and search it without proceeding legally, and anything that they found there could not be evidence against the defendants.

The Court: What about that, Mr. Brancato?

Mr. Brancato: The place they went to search, that is, the grocery store, is a place where the defendants were seen coming out of but a short while before, probably half an hour before, the four of them, and from that place they went to the place at number 138 Union Street.

The Court: That is all very true, but how about the point just raised that the officers had no right to enter there and certainly no right to seize anything and attempt to offer it in evidence against the defendants, without having a search warrant.

[fol. 130] Mr. Brancato: I have not offered anything in evidence yet.

The Court: But the minute that you get into the record what the officers found there, if anything, effect is brought about. Unless you can show the Court some authority for this entry by the officers into the premises, which was either the residence or place of business of one of the defendants, the Court will have to sustain the objection.

Mr. Brancato: It was the defendant's place of business; that is, the place of business of Pace, who was a partner with—

Mr. Kesselman: Oh, I object. There is not any evidence—

The Court: Strike that from the record.

Mr. Kesselman (continuing): It isn't in the record at all.

Mr. Brancato: I will prove that.

The Court: But you are not giving the Court any authority for the entry by the officers and search of private property.

Mr. Brancato: They do not have to have a search warrant.

Mr. Kesselman: There is no crime committed on these premises.

The Court: No proof of that. Objection sustained.

By Mr. Brancato:

Q. Now, you did go to this grocery store and came out?

A. I did.

Q. Do not tell us what you found there. After you came out from this grocery store at 167 Columbia Street, where did you go?

A. Home.

Q. Now, I refer you to defendant's exhibit A, the photograph, and [fol. 131] call your attention to the lower window, the panes of glass there, and ask you if that glass was on those windows, on the night of January 16th, Monday night at eight o'clock or thereabouts, when these men were arrested?

A. They were not.

Q. If they were stained at that time?

A. They were not.

Q. Could you see through from the street into the room, through those windows?

A. Positively.

Q. Is there any glass smashed on that photograph?

A. It looks like it.

Q. You say "It looks like it;" just what do you mean?

A. I believe there is.

Q. Can you tell us whether the glass after you shot through it with your revolver looked like the photograph there now?

A. Positively not.

Q. Just describe as well as you can what happened to that glass, after you fired your revolver through it?

A. Crashed, came down, this whole window went out.

Q. How large a window is that about?

A. You mean the pane of glass or the whole window?

Q. The pane of glass, each panel; there are two panels, aren't they?

A. Yes, sir.

Q. Each panel, how large is it about?

A. I should think about four by one and a half—three by one and a half.

By Mr. Price:

Q. Three feet by one and a half feet?

A. Yes, sir.

By Mr. Brancato:

Q. You are speaking of each panel, the upper panel and the lower panel, is that right?

A. Yes.

[fol. 132] Q. There are two windows, one up and the other down?

A. The window pane, for instance, to replace in there, I would judge about two feet by one; that is, the pane of glass that would fit into the one that was broken; that is the only way I can explain it.

Q. You mentioned before about some money being found on one of the defendants?

A. I did.

Q. Which one was that?

A. Stephen Alba.

Q. How much money was found on his person, if you know?

A. Three hundred and fifty dollars.

The Witness: May I ask a question?

The Court: Yes.

The Witness: May I stay in the room after I testify, to help Mr. Brancato?

The Court: Unless there is objection to it, the Court will permit the witnesses who have testified to remain in the room.

Mr. Price: That is what I want him to do.

The Court: If counsel objects they will have to remain——

Mr. Price: I want your Honor to order them to stay in the room after they have testified. If they can go out after they have testified, it will do no good.

The Court: Then they will stay in the room.

Mr. Price: Certainly.

By Mr. Brancato:

Q. Now, at the time that the agents, together with Napolitano and Nunzio left the New York office on Monday night, Monday afternoon, January 16th, did you see Napolitano get any money?

A. I did.

Q. Who gave him the money?

A. Officer Oyler.

[fol. 133] Mr. Price: Objected to as incompetent, irrelevant and immaterial.

Mr. Brancato: I want to trace down the marked money.

The Court: Yes, objection overruled.

Mr. Price: I except.

By Mr. Brancato:

Q. Who gave him the money?

A. Officer Oyler.

Q. Were you present?

A. I was.

Q. Can you tell us now from your own memory the denominations of the bills which were given to him by Oyler?

A. I cannot, no, sir.

Q. At the time that Officer Oyler gave this money to Napolitano, was there any memorandum taken?

A. There was.

Q. Tell us about that memorandum, what was done, what did it contain?

A. The serial numbers of the bills given to Napolitano.

Q. That memorandum, how was it written?

A. How was it written?

Q. Longhand or typewritten?

A. Typewritten.

Q. Or printed or what?

A. Typewritten.

Q. At the time that the memorandum was made, was there a comparison made of the numbers of the memorandum with the numbers of the bills?

A. Always, yes, sir.

Q. Did anybody sign the memorandum?

A. Yes, sir.

Q. Did you sign it?

A. Yes, sir; I did.

Q. I show you this piece of paper and ask you if you ever saw it before?

A. Yes, sir.

Q. Tell us what it is.

Mr. Price: I object to it; he cannot tell us what a thing is that is not in evidence.

[fol. 134] The Court: Yes, objection sustained.

Mr. Brancato: I offer it in evidence.

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and not binding on the defendants. It is a self serving declaration.

By the Court:

Q. Where did you first see this paper?

A. In our office.

Q. At what time? On what day?

A. About five o'clock in the afternoon.

Q. On what date?

A. On the 16th of January.

Q. Who were there when you saw the paper?

A. Officers Oyler, myself, Pacetta, Mellon, McCormick, Mr. Connolly.

Q. Where was the paper when you first saw it?

A. The paper?

Q. Yes?

A. I do not understand it.

Q. In whose possession was the paper when you first saw it?

A. Officer Connolly.

Q. Was the paper that is now offered in evidence blank or did it have anything on it when you first saw it?

A. It was blank.

Q. What occurred with respect to the paper after you first saw it? Be careful not to repeat any statements made.

Mr. Price: I respectfully except to your Honor's question on the ground that it is incompetent, irrelevant and immaterial and not binding on the defendants, an endeavor by parole evidence to get into the evidence the contents of a paper which is not in evidence.

The Court: Objection overruled.

Mr. Price: I except.

[fol. 135] A. The numbers were marked by a typewriter on this paper, that were called off.

By the Court:

Q. What numbers?

A. The serial numbers of the bills given to Napolitano.

The Court: Objection overruled. The paper is received in evidence.

Mr. Price: I except.

(Paper is marked in evidence Government's Exhibit 9.)

Mr. Price: That objection is in behalf of all the defendants.

Mr. Brancato: If the Court please, I object to counsel for Mr. Centorino objecting for all the defendants. They each have lawyers.

Mr. Price: I asked Mr. Wackerman if that was not so and he says that that was his understanding.

Mr. Brancato: He ought to stand up and speak for himself.

The Court: The Court cannot permit that to be done, Mr. Price. Each counsel will have to object in behalf of his own clients.

Mr. Kesselman: I object on behalf of the defendants Agnello and Pace. I did not want to be jumping up all the time when one objection is made by one counsel. I did not want to burden the record or you Honor or the jury, laying up three similar objections; but if you Honor rules that we must do that, I will.

The Court: You must do that. It may be good in behalf of one and not in behalf of the other.

[fol. 136] Mr. Wackerman: I make the same objection.

The Court: Objection overruled, with permission to move to strike out the testimony if the Government does not offer evidence sufficient to connect all the defendants with the conspiracy or sale.

By Mr. Brancato:

Q. After the time that Alba was searched at No. 138 Union Street and money found on his person, was that memorandum presented or shown?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and not binding on my defendant.

The Court: Objection overruled.

Mr. Price: I except.

Mr. Kesselman: Objected to on the same grounds.

The Court: Objection overruled.

Mr. Kesselman: Exception.

Mr. Wackerman: The same objection.

The Court: Objection overruled.

Mr. Wackerman: Exception.

A. It was.

Mr. Kesselman: I want to call your Honor's attention to certain statements being written in Government's Exhibit 9 which are conclusions on the part of somebody.

The Court: Let me see the paper.

Mr. Kesselman (handing paper to court): I think the third and fourth line should be excluded with reference to certain defendants. [fol. 137] The Court: Motion granted, and there is stricken out from this exhibit the words "Beginning with the following" and ending with "Brooklyn, New York."

Mr. Brancato: If the Court please, I will consent that you strike out, with the exception of the serial numbers.

The Court: Motion granted. I think that can be just taken bodily from the exhibit.

Mr. Brancato: Yes.

The Court: Let it appear on the record that the jury has not yet seen any part of the exhibit.

Mr. Brancato: The date has to appear on it.

The Court: He states that it was January 16th.

Mr. Brancato: I mean the memorandum shows that the date is on the memorandum.

The Court: Yes, that can appear.

By Mr. Brancato:

Q. Now, when this money was found in Alba's pocket—possession, was there a comparison made of the numbers on the money found on him with the numbers on the memorandum?

A. Yes, it was.

Q. Were the defendants present at that time?

A. I believe they were.

Q. Did the numbers correspond?

A. They did.

Mr. Wackerman: That is objected to on the ground that it is incompetent against the defendant Frank Agnello. There is no proof that he was present at the time.

The Court: Objection overruled.

Mr. Wackerman: Exception. He said he "believed" it.

[fol. 138] The Court: If he does not testify positively, it must be stricken out.

Mr. Kesselman: He used the word "believed."

The Court: Motion granted.

By Mr. Brancato:

Q. Who was present?

A. I cannot remember.

Q. Was Alba there?

Mr. Wackerman: I am objecting to that, objecting to the District Attorney leading the witness. The witness testifies he did not remember.

The Court: Objection overruled.

Mr. Wackerman: Exception.

By Mr. Brancato:

Q. Was Alba there?

A. I don't remember.

Q. Did you see the money taken from Alba?

A. I took it from him.

Q. You took it from him?

A. I did.

Q. What did you do with the money after you took it from Alba?

A. I turned it over to Officer Connolly or Officer Oyler, I am not sure; either one.

Q. Either Connolly or Oyler?

A. Yes, sir.

Mr. Brancato: I offer this money for identification at this time.

(The money was marked in evidence Government's Exhibit 10 for identification).

By Mr. Brancato:

Q. I do not know whether I asked this question before or not. Who took all the packages that were found on those premises at the time of the arrest? Which agent took them?

A. Officer Connolly.

[fol. 139] Mr. Brancato: That is all. Your witness.

Cross-examination by Mr. Price:

Q. Now, Officer, while you have defendant's exhibit A in your hand, will you please mark on the window "B" with a pencil, write the figure "1" on the glass that you say that you shot through and will you please put at the bottom of it the figure "1" right at the very spot that you held your revolver when you shot?

A. That is impossible.

Q. Did you hold your revolver at the window?

A. I did not.

Q. How far from the window did you hold your revolver?

A. About two feet.

Q. Will you please put on the photograph, on the very pane of glass that the shot was fired through, a dot, the point of entry of the bullet?

A. I cannot.

Q. You cannot do that?

A. No, sir.

Q. Have you any idea as to what part of the window the shot went through?

A. I am not sure.

Q. Show me on the photograph by a dot where the shot entered the window?

A. I cannot show the exact spot. I can show the window I shot through.

Q. That is the nearest that you can come to it?

A. Positively.

Q. Will you please mark the window that you shot through with the numeral "1:" that is the glass, the specific glass? (Witness does as requested).

Mr. Price: The upper right hand pane of room "B."

(Photograph is shown to jurors).

[fol. 140] By Mr. Price:

Q. You claim that that shot shattered the entire pane of glass, Officer?

A. I don't know whether it was the entire glass; it sounded as if it was.

Q. Did you look at that glass afterwards?

A. I did; not afterwards no.

Q. You never looked at it after the shot was fired through?

A. I jumped away from it; I heard the crash.

Q. Did you ever look at it again after the crash?

A. Not to my knowledge.

Q. Well, now, in the same window frame you testified that the other window, as I understand it, right underneath the window that you claim you shot through, was not broken at that time, did you?

A. It was not.

Q. You testified to that before, before you shot through it?

A. I believe I did.

Q. And that is true, isn't it?

A. Positively.

Q. As I understand your testimony, officer, you looked through the window—may I have the exhibit, please, if you do not mind, sir?

(Witness hands counsel exhibit).

Q. (Continuing:) You looked through the window designated "B." is that right?

A. Yes.

Q. Do you remember which of the two lights of glass that you looked through, the one with the letter "B" on it or the other?

A. Both of them.

Q. You were looking through both of them?

A. Yes, sir.

Q. Was there a light lit in the room "B"?

A. There was.

Q. A gas light?

A. I don't know.

Q. Well, you were looking into the room?

A. I was.

[fol. 141] Q. You cannot tell now whether it was a gas light?

A. No, sir.

Q. You are sure about that?

A. I am positive.

Q. How many lights were lit in that room?

A. In that room?

Q. In the room "B" I am talking about?

A. I don't know.

Q. Was there more than one?

A. I don't know.

Q. Was there a dozen?

A. I don't know.

Q. Is that your best answer?

A. It is.

Q. And with the light lighted in room "B" you were looking through the window of room "B"; I understand your testimony to be that the window is just plain glass with no curtain, shade or anything to obstruct your view; is that right?

A. Positively.

Q. There was no window shade on that window was there?

A. No, sir.

Q. You are positive of that?

A. I don't know whether it was on the window; it was not drawn down.

Q. Why did you so answer, if you did not know?

A. I thought that is what you were going to ask.

Q. Oh, you are anticipating my questions, are you?

A. I did.

Q. Did you just testify to something that you did not know anything about; answer yes or no?

A. No.

Q. You did not?

A. No.

Q. Didn't you just say "No," in answer to a question that you did not know what I was going to ask you?

A. You had about finished it.

Q. Now, let us get back to the time that the numbers of the bills were taken; you testified they were taken on Monday afternoon at five o'clock?

A. Around that time.

[fol. 142] Q. There is no doubt in your mind that that is the fact?

A. It may be earlier or later.

Q. But it was on Monday afternoon, you are sure of that?

A. I am positive of that.

Q. You cannot be mistaken about that?

A. Hardly.

Q. Would it change your mind to know that Napolitano testified that he went there with the marked money on Saturday night?

Mr. Brancato: One moment. I object to the question upon the ground that there is no such evidence as that.

Mr. Price: Isn't there?

Mr. Brancato: That this marked money in his pocket—

The Court (interrupting): The witness can straighten that out.

Mr. Brancato: But he should not ask a question like that if there is no evidence.

Mr. Price: That is the testimony in this case.

The Court: Listen, Mr. Witness, carefully to the question. If that is not your understanding of the testimony, say so.

(Last question was repeated by the reporter.)

A. It would not.

By Mr. Price:

Q. Would it change your mind to know that Napolitano testified in this case that he went there with marked money on Saturday night, ready to do business?

A. He did, with some marked money.

Mr. Price: I move to strike out the answer on the ground that it is [fol. 143] not responsive. I ask your Honor to direct the witness to answer my question.

The Court: What kind of an answer do you want to the question?

Mr. Price: I asked him, would it change his testimony——

The Court: You mean would it change his testimony now if it were true that Napolitano testified that he went over to this Union Street house with seven hundred dollars in marked money?

Mr. Price: No, \$350 in marked money.

The Court: He says he had \$350 in marked money at that time?

Mr. Price: Yes, he testified that this was the very money.

By the Court:

Q. It is not the fact that this is the same money or don't you know?

A. He had marked money.

Q. Was it the same money or part of the same money?

A. Part of the same money.

By Mr. Price:

Q. Wasn't it all of the same money?

A. It may have been.

Q. Were you there on Saturday when the money was marked?

A. I was.

Q. Isn't it a fact that this Government Exhibit 9 for identification, wasn't that prepared on Saturday?

A. The money was recopied.

Q. I did not ask you that; I asked you——

A. (Interrupting.) I cannot answer that. We went with two marked money slips.

Q. That is, now you want the jury to understand that on Saturday the money was counted and marked, is that right?

A. Positively.

[fol. 144] Q. And then again on Monday?

A. I think I can show here——

Q. (Interrupting.) I did not ask you that?

A. I am only trying to answer the question.

Q. Don't please try to do anything for me. Just answer my questions when I ask them.

Mr. Brancato: I object to counsel arguing with the witness.

The Court: Objection sustained.

By Mr. Price:

Q. Were you present on Saturday when the money was marked?

Mr. Brancato: I object to it on the ground that he has already answered it four times.

The Court: Objection overruled.

By Mr. Price:

Q. Were you?

A. I was.

Q. Wasn't it the same money that Napolitano had on Saturday he again had on Monday?

A. Not exactly the same money, no.

Q. Well, now, when you came over on Saturday night, who came over with you?

A. Officers Pacetta, Mellon and Connolly, Nunzio and Napolitano.

Q. By the way what is Napolitano's official title in your department?

A. He has not any.

Q. He has no title?

A. He has not.

Q. How often does he work in your department?

A. For the last year and a half.

Q. How often? I did not ask you how long?

A. I cannot answer that.

Q. How many cases has he worked on with you?

A. Over a dozen or two.

[fol. 145] Q. Well, which is it, two dozen or one dozen?

A. It could be; I don't know which.

Q. Is that your best answer?

A. Positively.

Q. How many cases has Nunzio worked on with you?

A. One.

Q. Is this the only one?

A. Yes, sir.

Q. What is Nunzio's official title in your department?

A. He has not any.

Q. You are sure about that?

A. Special employee, but that is not any title.

Q. That is Nunzio's calling, special employee, is that it?

A. Both.

Q. And Napolitano's?

A. Yes.

Mr. Brancato: Well, what is the answer?

Mr. Price: He said yes.

Mr. Brancato: He said "Both"; applying to both witnesses.

By Mr. Price:

Q. Now, on Monday night you went over there in company with both of these special employees, Mellon, Pacetta and Connolly, is that it?

A. Yes.

Q. You went over on a Court Street car and got off the Court Street car at Union Street?

A. I did.

Q. They did too, didn't they?

A. Yes, sir.

Q. You walked down on Union Street, didn't you?

A. Yes, sir.

Q. Nunzio and Napolitano were first, together, weren't they?

A. Well, not necessarily.

Q. I am not asking you necessarily, I am asking you for the facts.

A. I don't know.

Q. Are you serious about that?

A. Positive.

Q. Who walked along Union Street of those men first? Give me the order in which they walked?

A. I don't know.

Q. Were you walking behind Nunzio and Napolitano?

A. I was.

[fol. 146] Q. Who else was walking behind?

A. Pacetta was with me. That is all I know.

Q. Who was behind you if you know?

A. I could not remember.

Q. What side of the street did you walk down on, the same side as 138 was on or the opposite side?

A. The opposite side.

Q. Did Nunzio walk down on the opposite side too?

A. He did.

Q. Did Napolitano walk down on the opposite side?

A. He did.

Q. You all continued on that side, which would be the right hand side going down?

A. Yes.

Q. You all continued on that side of the street until you got to 138 Union Street?

A. Did I understand you to say "all"?

Q. Yes.

A. No.

Q. Well, you don't know whether the other two men were, do you?

A. Which other two men?

Q. Why, you have accounted for yourself and Pacetta.

Mr. Brancato: If the Court please, I object to this, "the other two men." He said "Which other two men does it refer to?"

Mr. Price: Six Agents.

Mr. Brancato: Ask him about the six agents.

Mr. Price: Please—

The Court: Do you mean two or six?

Mr. Price: I am going to ask him. He has asked me a question. I am going to answer that. He said, "What other two men?" And I am going to tell him.

Mr. Brancato: You did not start to tell him.

Mr. Price: I will tell him in my own way without any help from you.

[fol. 147] Mr. Brancato: You will tell him in the right way.

By Mr. Price:

Q. You testified that Nunzio and Napolitano walked down Union Street ahead of you, didn't you?

- A. Yes, sir.
- Q. You were with Pacetta?
- A. I was.
- Q. Coming down Union Street behind them?
- A. Yes, sir.
- Q. On the side opposite to 138 Union Street?
- A. Yes, sir.
- Q. That is right, isn't it?
- A. Yes, sir.
- Q. Now, there were two other agents there, Mellon—right?
- A. Yes, sir.
- Q. What was the other man's name?
- A. McCormick and Connolly and Moog.
- Q. I am talking about Saturday night. Those men were not there, were they?
- A. Oh, yes, they were.
- Q. Didn't you tell me that you got off the car with six men?
- A. Yes.
- Q. That there were six in your party; didn't I ask you to tell who they were?
- A. Six or more. I don't know. I will give the names of them.
- Q. Didn't you, when I asked for the names, tell me that it was Connolly, Mellon, Pacetta, yourself, Nunzio and Napolitano; didn't you say that a few minutes ago?
- A. If I did I made a mistake.
- Q. How many other mistakes have you made in this case so far?
- A. If you will call my attention to them, I will tell you.
- Q. Well, there was some other men there, was there?
- A. There was.
- Q. On Saturday night I am talking about?
- A. Other officers?
- [fol. 148] Q. Yes, they are men aren't they?
- A. I have mentioned them all.
- Q. There was McCormick; who else?
- A. McCormick—
- Q. I mean outside of the six including yourself that you have already named, McCormick, Moog, that is eight?
- A. You say that I have not named them. I will name them all to be sure.
- Q. You have named six of them, you named yourself and Napolitano—

Mr. Brancato: I object to this argument.

Mr. Price: Now, may I ask a question?

Mr. Brancato: I object to this argument. Counsel is trying to get the names of the men. The witness says "I will tell the names" and yet he won't let him tell.

Mr. Price: I am going to tell them to him and ask him.

The Court: Let counsel give the names; that is proper.

By Mr. Price:

Q. You testified, as I understand it, that there was Nunzio, Napolitano, walking in the front?

A. Yes, sir.

Q. And Pacetta and you walking behind them, and then that there was some other men behind you, then you testified that Moog and Mellon were there; is that right?

A. Yes, sir. It is not right with the testimony, no. I told you I did not know who was in front. You asked me whether I was behind Nunzio and Napolitano and I said, "Yes." I don't know who led the way.

Q. But there were some other agents there?

A. There was.

Q. Moog, Mellon, McCormick, right?

A. Yes.

[fol. 149] Q. And Pacetta?

A. Yes, sir.

Q. And yourself?

A. Yes, sir.

Q. And Nunzio?

A. Oyler and Connolly.

Q. And Napolitano?

A. Yes, sir.

Q. And Oyler?

A. Yes.

Q. And Connolly?

A. Yes, sir.

Q. You are not mistaken about Saturday night?

A. Positively not.

Q. They were all there Saturday night?

A. They were all there Saturday night.

Q. And the same men that were there Saturday night were there again on Monday night?

A. Four of them.

Q. What?

A. Four of them.

Q. Who were there on Monday night?

A. Agent Pacetta, Mellon, Connolly and myself.

Q. Is that all?

A. That is all.

Q. That is there were four agents and Nunzio and Napolitano?

A. Yes, sir.

Q. On Monday night?

A. Yes, sir.

Q. Now, on Monday night——

A. On Saturday night.

Q. What was that answer please?

A. On Saturday night, the 14th.

Q. Didn't you just tell me that on Saturday night that there were about eight or nine men there?

A. I will mention the dates then I am sure of what I am talking about. You have got me so I don't know what I am talking about.

Q. Didn't I just go all over it with you—didn't you tell me on Saturday night—

Mr. Brancato: If the Court please, I am going to ask the Court to instruct this witness to be calm and not answer a question until the question is put to him by counsel.

[fol. 150] The Court: Very well. Be sure the questions are completed.

Mr. Price: May I have this testimony read about three or four questions back, as to whether it was Saturday night?

The Court: Yes.

(The reporter read the record as requested from the question, "I am talking about Saturday night; those men were not there, were they?" down to and including the question and answer, "They were all there Saturday night?"

A. They were all there Saturday night.")

By Mr. Price:

Q. You heard that testimony read, didn't you?

A. I did.

Q. Didn't you just say in answer to my question that on Saturday night, all these agents were with you; didn't you?

A. I did, according to the testimony.

Q. Now, that is another mistake, isn't it?

A. It is positively a mistake.

Q. Didn't you, according to the testimony that was read say that there was only four of you, and the two men, Nunzio and Napolitano, were there on Monday night? Didn't you just say that?

A. I am not going to answer that.

By the Court:

Q. Is it a fact that you just said it, if you remember?

A. I am confused in the statements, now, whether I did or not.

Q. If you say, "You don't remember" you can say so? Is it a fact that you answered it, or don't you remember?

A. According to the testimony, I think I did.

[fol. 151] By Mr. Price:

Q. That is another mistake too, isn't it?

A. It is.

Q. Now, within the last five minutes I showed you not only one mistake but three mistakes?

A. You did, yes.

Q. Have you made any other mistakes in your testimony that you can recall at this time?

A. Positively not.

Q. When you got to the place on Saturday night, did you look through the window in the room "B"?

A. That was the 14th?

Q. Yes.

A. I did.

Q. You are sure about that?

A. I am positive about that.

Q. Who was in the room "B" on the 14th?

A. Alba.

Q. Alone?

A. He was.

Q. Anybody else in that room with him?

A. Only the two that went in.

Q. You mean Patsy, who testified here?

A. And Nunzio.

Q. What is Nunzio's other name, if you know?

A. I don't know.

Q. How often have you seen him over in your office?

A. About a dozen times.

Q. When did you see him last?

A. I don't know.

Q. You don't know when you saw him last?

A. Pardon me, last night.

Q. So you do know, don't you?

A. Yes, sir.

Q. When you said you did not know, that was just another mistake, wasn't it?

A. Yes, sir.

Q. How many times have you spoken to this man Nunzio?

A. I don't know.

[fol. 152] Q. Well, you spoke to him on Saturday, the day that you went there, the 14th, didn't you?

A. I did.

Q. You spoke to him after you came back from there on Saturday the 14th?

A. I did.

Q. You spoke to him on the 16th before you went to 138 Union Street?

A. I did.

Q. You spoke to him after he came away from 138 Union Street?

A. I did.

Q. Have you any recollection of ever having spoken to him either before or after that in your life?

A. After that?

Q. When was the first time after that that you spoke to Nunzio?

A. I cannot remember.

Q. Did you see him between the night of the 16th of January of this year, before you saw him last night?

A. I may have.

Q. Did you?

A. I don't know.

Q. You cannot tell me that?

A. No, sir.

Q. Did you ever speak to him before the night of January 14, 1922?

A. I did.

Q. How many times?

A. I don't know.

Q. Did you ever ask him his last name?

A. No.

Q. Did you ever ask him what his occupation was? A. I may have.

Q. Is that your best answer?

A. It is.

Q. Did you ever ask him where he lived?

A. No.

Q. Did you ever ask him if he was in business at any address?

A. I may have.

Q. Now, you are absolutely positive that on the Saturday night, the 14th, that you saw the defendant Alba—may I come up and hand this witness the photograph—in the room designated "B" on this photograph, Defendant's Exhibit A?

A. Right.

Q. Are you finished?

A. I said, "No."

[fol. 153] Q. Did you say "No"?

A. Positively.

Q. Are you sure of that?

A. Positive.

Q. Didn't you testify here a few minutes ago that you saw Alba in Room "B"?

A. I did not say—I said room "A".

Mr. Price: May I have the record read again, please.

The Court: Yes.

(The record was repeated by the reporter.)

The Court: You have heard your testimony read. Please answer the question.

The Witness: I certainly did.

By Mr. Price:

Q. You heard the testimony that you saw Alba and Nunzio and Napolitano in the room "B" on Saturday night the 14th?

A. You may have confused me on "A" and "B" rooms.

Q. Are you easily confused?

A. I am, yes.

Q. So that your testimony that you gave here is not correct, is it?

A. It positively is, with the exception of those two.

Q. I mean just what was read to you was incorrect, isn't it?

A. It is.

Q. That is another mistake that I have been able to point out to you?

A. Yes, sir.

Q. Do you remember just a few minutes before that that I came up and stood alongside of you and I showed you this Exhibit, Defendant's Exhibit A?

A. Yes.

Q. I asked you to mark the window, didn't I, where you shot through?

A. I did.

Q. You marked it with the figure "1"?

A. I did.

[fol. 154] Q. You had a good look at the exhibit?

A. Yes, sir.

Q. You are familiar with the exhibit?

A. Yes.

Q. Now, do you want to change your testimony to have it that you were looking into the kitchen, room "A"?

A. I was looking in both windows.

Q. On Saturday night?

A. On Saturday night.

Q. Did you not say just a minute ago that you were mistaken, that you were not looking into the windows of room "B" but through the windows of room "A"?

A. I told you you had me confused. In room "A". I saw Alba in room "A", in the kitchen.

Q. On Saturday did you see him?

A. On Saturday.

Q. In the room "B" on Saturday night?

A. I did not.

Q. Did you see anybody else in the room "A" on Saturday night but Alba?

A. I did.

Q. Who else was there?

A. Nunzio and Napolitano and Centorino later.

Q. Later Centorino came in; was that right?

A. He did.

Q. So let us get down to Monday night. Now, on Monday night you had all these men down there with you; is that it?

A. On the 16th, yes.

Q. You had a greater number of men on the 16th, didn't you?

A. Positively.

Q. You had all of the agents whose names you have given here, on the 16th?

A. Positively.

Q. Do you remember when you got off the Court Street car how you walked down Union Street?

A. I do.

Q. What side of the street did you walk down?

A. On the right hand side.

Q. That is the same side of the street that you walked down on Saturday night?

[fol. 155] Mr. Brancato: One moment, I assume that you are speaking of the 16th, Monday night, are you?

The Witness: That is what I have reference to.

Mr. Price: The record shows it.

Mr. Brancato: Let us have it right. Don't have him speak about one thing and then——

The Court: It is the 16th, officer.

Mr. Price: Life is too short to be angry.

Mr. Brancato: I am not angry, far from it.

By Mr. Price:

Q. Didn't I just ask you about Monday night, the 16th, Officer Manning?

A. You did.

Q. You understand it, don't you?

A. Yes, sir.

Q. There was nothing to confuse you in that question?

A. I mentioned the date myself.

Q. I asked you, too, didn't I? I said, "Get down to Monday night, the 16th?"

A. Yes, sir.

Q. Well, on Monday night you all walked down Union Street on the right hand side?

A. Yes. Now, just a minute. I can have a chance to finish the answer. You say that "We all walked down?"

Q. I will straighten you out. I won't confuse you?

A. I know you have tried to.

Q. Did Nunzio and Napolitano walk down on the right hand side?

A. They did.

Q. Ahead of you?

A. Yes, sir.

Q. Do you remember who else was in front of you?

A. No, I don't.

Q. Was Pacetta walking with you on Monday night?

A. He was.

Q. The other agents whose names you have given us, you don't know whether they were in front of you or behind you?

A. I know some went on the other side.

[fol. 156] Q. Do you know which ones went upon the other side?

A. I don't.

Q. Were they in front of you or behind you?

A. I don't know.

Q. You are sure, however, that on both these nights, the 14th and 16th, that Nunzio and Napolitano walked down on the right hand side opposite to 138 Union Street?

A. I am sure of Monday night.

Q. You are of Monday night?

A. Positively.

Q. Positive?

A. Positively.

Q. You cannot be mistaken about that?

A. No, sir.

Q. Would it change your opinion if Napolitano testified that he and Nunzio walked down on the same side that 138 Union Street was on Monday night?

A. Not a bit.

Q. You would still stick to your conclusion?

A. I know.

Q. You know better than the man who actually walked?

A. If he said that, I do, yes.

Q. If he said it, you say that is not the fact?

A. It is a mistake.

Q. What time did you leave your office in New York on Monday night?

A. Five o'clock; in the neighborhood of five o'clock.

Q. You came over directly to Brooklyn?

A. I did not.

Q. Where did you meet the other agents to come to Brooklyn?

A. They were with us.

Q. Well, what time did you get on the Court Street car over in Manhattan?

A. About a quarter to eight.

Q. In the evening?

A. Yes.

Q. On Monday night?

A. Yes, sir.

[fol. 157] Q. There is no mistake about it?

A. Positively none.

Q. And did you look at your watch?

A. I won't say I looked at my watch.

Q. As you come across the bridge on the trolley, you know where the Police Gazette Building is?

A. I do.

Q. You know where the big clock is on the Police Gazette Building is?

A. I do.

Q. Did you look at the clock as you went by?

A. I did not. Somebody else may have.

Q. You did not?

A. I did not.

Q. So when you give the time as a quarter past eight, that is your best guess?

A. Around that time.

Q. That is your best information?

A. I know it was that time.

Q. How do you know?

A. Because when we made the arrest, we knew that time; we were looking at the time.

Q. You were looking at the time. Did you look at the time at any time until you got down to Union Street?

A. Not that I remember.

Q. In the neighborhood, did you look at the time?

A. I did, somewhere in the neighborhood.

Q. You don't know where?

A. I don't.

Q. Did you have a watch with you?

A. I have one, yes.

Q. Did you have one with you on that Monday night?

A. I did.

Q. Did you look at your watch that night?

A. I certainly did.

Q. When did you look at the watch before you made the arrest?

A. I don't know.

Q. When did you look at it—what time did it indicate?

A. I don't remember.

[fol. 158] Q. You have testified in a good many of these cases, haven't you?

A. Yes, sir.

Q. You have testified in a good many Government cases?

A. Quite a good deal.

Q. It is nothing new for you to testify, is it?

A. It is not.

Q. You are what is known as an experienced witness, aren't you?

A. I should think so.

Q. What time do you say the arrest was made on Monday night?

A. Between half-past eight and a quarter of nine.

Q. Did you look at your watch at the time that the arrest was made?

A. I did not.

Q. When you say that you went into the room "A" through the kitchen window, you mean the window was unlocked and you just raised it up and went through?

A. When was this?

Q. On Monday night?

A. Yes.

Q. That is, you did not break the window?

A. I did not.

Q. You just went in through the window?

A. Yes.

Q. When you got inside, you found some of the other officers ahead of you, in the room "A"?

A. In the room "A"?

Q. In the room "A"?

A. I did not say where I saw them.

Q. Are you sure about that?

A. I am not sure, no.

Q. Do you say you are sure or you are not sure?

A. I said I am not sure. You are telling me what I said.

Q. Yes, I am going to tell you what you said, because I copied it.

A. All right, sir.

Mr. Brancato: What is the use of wasting time?

[fol. 159] Mr. Price: I object to any—

Mr. Brancato: It is not the official record. You can ask the witness if he said it, but you cannot say he said that unless it is read from the official record.

The Court: You may ask him.

Mr. Brancato: If he said that.

The Court: Yes.

Mr. Brancato: That is what I want him to ask.

The Court: Then you may deny it. This is cross examination, the understanding being it is in the form of a question.

Mr. Brancato: If he said that.

The Court: Yes.

By Mr. Price:

Q. Didn't you testify on part of your direct examination that you went through the window in the room "A," and when you got into the room "A," some of the other agents were in the room "A"?

A. They were in room "B" at the door.

Q. Will you answer my question, did you so testify?

A. Not that I remember.

Q. If you did testify to that, was that the fact?

A. What is that?

Q. If you did testify to that, was that the fact?

A. It could be; they were right in the doorway in between.

Q. You are sure now where they were?

A. I am positive where they were.

Q. They were in the doorway?

A. Yes, and in the room "B."

Q. In what room?

A. "B" room.

Q. I am talking about "A" room. Were they in room "A" when you got in?

A. What is that?

[fol. 160] Q. I am talking about "A" room. Were they in room "A" when you got in?

A. They were at the doorway; you can call it in or out.

Q. When you got into the room "A," who was in the room "A" this Monday night now, after you fired the shot and opened the window and went through the window, who was in the room "A," if anybody?

A. I understand that thoroughly. Mr. Alba's wife, the old lady; I don't know whether it is his wife or who it is, and Napolitano.

Q. Where was Napolitano?

A. Right at the door.

Q. What door?

A. Leading to the hallway.

Q. He was not in the doorway leading from the room "A" to the room "B," was he?

A. He was all over the place.

Q. At the one time he was all over the place?

Mr. Brancato: Oh, I object to that; he did not say that.

By Mr. Price:

Q. I said to you, Mr. Manning, that when you got into the room "A," where was Napolitano and you just said in reply to my question, did you not, that he was in the doorway leading from the hallway of the room "A," didn't you say that?

A. Yes, sir, in that section, yes.

Q. At that particular time?

A. Well, I wouldn't say at that particular minute. I don't know where he was a minute before that.

Q. I did not ask you a minute before that. I asked you that as soon as you got into the room "A," you saw Napolitano in the doorway leading into Room "A," into the hallway?

A. He was in both doorways; he was in the other doorway; I say. I don't know just the minute where he was when I broke in.

[fol. 161] Q. So when you testified here a minute ago that he was in the doorway of the hallway leading into the room "A," you testified to something about which you are again mistaken, didn't you?

Mr. Brancato: Oh, I object to that. There is no evidence of any mistake at all.

Mr. Price: I will ask him again.

Mr. Brancato: Ask him the specific question.

Mr. Price: Mr. Brancato, I do not need your advice at all; I am perfectly all right without it.

Mr. Brancato: Oh, you are all right.

Mr. Price: Yes; I am; I admit it; I am like you.

The Court: We cannot spend all our time listening to you gentlemen say you are both all right.

By Mr. Price:

Q. Now, Mr. Manning, did you understand my question when I asked you before that at the very time that you got into the room "A," where was Patsy Napolitano?

A. I don't remember your asking that?

Q. Will you say I did not ask it?

A. I won't, no.

Q. Is your memory good?

A. Very good.

Q. Now, I will ask you all over again, at the very moment that you went into the room "A," through the window "A," where was Pasquale Napolitano?

A. Walking towards the hall door.

Q. By the "Hall door," you mean the door which leads from the room "A" out into the hall towards the street?

A. Positively.

Q. What did he do after he walked to the door?

A. I don't know.

[fol. 162] Q. When did you next see him?

A. All through the evening.

Q. (Continuing:) After that, sir?

A. All the while I was there.

Q. Where was he when you next saw him after he was walking to the door?

A. I don't remember.

Q. Where was Nunzio when you first saw him after going through the window of the room "A"?

A. In room "B" near the window.

Q. Near the window through which you had fired a shot?

A. Yes, sir.

Q. Did you take hold of Nunzio and line him up against the wall with the other defendants?

A. I did not.

Q. Did any of your brother officers line him up against the wall?

A. I don't remember.

Q. Why, don't you know, that they went through the ceremony of making it appear that Nunzio was under arrest?

A. We did, later on.

Q. You know what is necessary, officer, don't you, to make an arrest, don't you?

A. What is that?

Q. You know what is necessary to make an—I will withdraw the question.

Mr. Price: I think that is all.

The Court: Any further cross examination?

Mr. Kesselman: Yes.

Cross-examination by Mr. Kesselman:

Q. How long have you been in the Government Service?

A. Three years.

Q. During that time have you always been with the Narcotic Division of the Internal Revenue?

A. Always.

[fol. 163] Q. Have you at any time performed any duties for the Customs Officials?

A. No.

Q. Have you been a Customs Guard at any time?

A. Never in my life.

Q. In about how many cases have you testified during the period that you have been connected with the Government Service?

A. I would not know.

Q. About?

A. I don't know.

Q. You are not confused now, are you?

A. Not a bit.

Q. Pretty well composed?

A. Positively.

Q. Give me your best idea as to how many cases you have testified in since you have been in the Government service?

A. I cannot.

Q. Did you testify in five hundred cases?

A. I may have.

Q. Did you?

A. I don't know.

Q. Did you testify in one case?

A. I did.

Q. Was it more than ten?

A. Yes.

Q. More than twenty?

A. Yes.

Q. More than fifty?

A. Yes, sir.

Q. More than one hundred?

A. It may have been.

Q. Well, was it?

A. I don't know.

Q. Was it more than two hundred?

A. I don't know.

Q. Was it less than two hundred?

A. I don't know.

Q. About how many cases did you testify in during the first year you were in the service?

A. I have no idea.

Q. Can you give us any recollection at all?

A. I cannot.

Q. Or your best judgment?

A. No, sir.

[fol. 164] Q. You have testified exclusively in narcotic cases since you have been in the service?

A. Since this service, yes.

Q. Have you been in any other service?

A. I have.

Q. For the Government?

A. No.

Q. What was your business before you went into the Government of the United States?

A. A parole—probation—probation officer.

Q. For whom?

A. With the New York City Parole Commission.

Q. How long did you work there?

A. Two and a half years.

Q. What was your employment before then?

A. Prison keeper.

Q. A keeper at the jail?

A. I was head keeper at the Penitentiary, New York County Penitentiary.

Q. Did you resign from there?

A. I did.

Q. When?

A. 1919, I believe.

Q. Were you ever connected with the Raymond Street Jail in Brooklyn?

A. I was.

Q. How long were you down at the Raymond Street jail?

A. I don't remember.

Q. Well, you were not the head keeper there, were you?

A. No, I was not.

Q. And that is not a penitentiary?

A. No, a City Prison.

Q. Was there any reason why you did not tell us about that?

A. Not at all; I was in all the prisons.

Q. You took particular attention to tell us that you were head keeper at the penitentiary?

A. That is the particular place I was the head keeper.

Q. You did not tell us anything about it?

A. I was a keeper at the jail.

[fol. 165] Q. You did not tell us anything about it?

A. You did not ask me.

Q. You did not tell us anything about it?

A. No, I did not.

Q. You understood the question when I asked you, of course, as to what other employment you had?

A. I did.

Q. You did not say anything then?

A. That is not—

Q. (Interrupting.) About being at the Raymond Street Jail?

A. I have been with the Correction Department, which takes in all the prisons.

Q. But you were very careful and specific to point out to the jury that you were head keeper at the penitentiary?

A. Yes, sir.

Mr. Brancato: I object to any further questions along this line.

The Witness: That is a matter of record.

Mr. Kesselman: All right.

By Mr. Kesselman:

Q. Now, you did not find any of these packages on the defendant Agnello, on his person, did you?

A. I did not.

Q. You did not find any on the defendant Pace?

A. I did not.

Q. You did not find any money on either of those defendants, either, did you?

A. I did not.

Q. Of course, when you were talking about bribery, you well understood what a bribe meant?

A. I certainly do.

Q. You know that a bribe is something which is illegal and unlawful?

A. Positively.

Q. You have known that—rather you knew that on the 16th of January?

A. Positively.

[fol. 166] Q. You did not lock up the defendant Agnello and charge him with bribery, though?

A. I did not get the two thousand.

Q. Well, he attempted to bribe you?

A. Yes, sir.

Q. And you did not lock him up for attempted bribery?

A. No, sir.

Q. You know that attempted bribery is a crime?

A. I don't know that.

Q. You don't know that attempted bribery is a crime?

A. No.

Q. Did you ever go to school?

A. Yes.

Q. Did you ever hear of any attempted bribery cases during all the years that you have been connected with the different institutions and divisions?

A. Yes, but I don't know what it constitutes, to have a case.

Q. You did hear of attempted bribery?

A. Positively, you read about it in the papers.

Mr. Brancato: I object to the question unless it means attempted bribery under our Federal Statutes; it may be different.

By Mr. Kesselman:

Q. At the time you claim the attempt was made to bribe you, you had another witness present?

A. I did.

Q. That was the chief of your division?

A. It was.

Q. He did not place this defendant Agnello under arrest for any such crime, did he?

A. He placed him under arrest for selling drugs.

Q. Did you hear my question?

A. Yes.

Q. Will you listen to it and answer it?

A. Yes.

Q. Answer the question that I asked you?

A. No reason at all.

[fol. 167] Q. You did not place him under arrest for attempted bribery, did you?

A. No, sir, we did not.

Q. You were down to 138 Union Street about a week ago, weren't you?

A. I don't think it was a week ago, no, sir.

Q. Weren't you down there a week ago yesterday?

A. I believe it was about three days ago; last Saturday, I believe.

Q. Are you sure you were there last Saturday?

A. I am not sure of anything about the days when I was there.

Q. You just said it was last Saturday, didn't you?

A. I said I believed it was around last Saturday.

Q. This is Tuesday; were you there Monday?

A. No.

Q. Were you there Sunday?

A. No, sir.

Q. Were you there Saturday?

A. I was there the day this case was called to trial.

Q. That was a week ago yesterday?

A. Well, if it was a week ago yesterday, that is the day I was there.

Q. You know the case was on a week ago yesterday, which was the 6th, the case was down?

A. Yes, sir.

Q. Still, a few moments ago you said you were there Saturday?

A. I said I believed I was there Saturday.

Q. You believed you were there Saturday, although you were there five or six days previous?

A. It may have been.

Q. You know you were there the day, the sixth, the day the case was called?

A. I told you that I was there that day.

[fol. 168] Q. You know you were not in Court here Saturday on this case?

A. No.

Mr. Brancato: I object.

By Mr. Kesselman:

Q. Were you here in Court on this case last Saturday?

A. No.

Q. Did you examine the putty on these various windows there at 138 Union Street?

A. I did not.

Q. You know new windows were put in, necessarily new putty would have to be put there also?

A. The first—

Q. (Interrupting.) Will you please answer my question, if you can? You know if they put a new window in there there will have to be new putty there? Wouldn't there have to be new putty there?

Mr. Brancato: I object to that form of the question unless he first qualifies this man as a glazier.

Mr. Kesselman: He is not as stupid as all that.

The Court: Objection overruled.

By Mr. Kesselman:

Q. Don't you know, Mr. Manning, that if you put in a new plate of glass that you have got to put in some putty on there?

A. I know that, yes.

Q. Did you look to see if there was new putty at that point?

A. Positively not.

Q. You did not look?

A. I did not.

Q. You did not think it was important?

A. I knew——

Q. You did not think it was important, although you come here and want the jury, the Court and jury to understand there is a difference [fol. 169] in the glass there from what was there on the 14th of January?

A. I did not say that there was a different glass there.

Q. You said the glass was broken as the result of the revolver shot which you fired?

A. Yes.

Q. Was the glass in the same condition when you were there a week ago yesterday as it was on the 16th of January?

A. It was not. What windows?

Q. We are talking about the glass which you broke with the revolver shot; it was not in the same condition, was it?

A. No, there was a new window in; that one; one pane——

Q. Didn't you look at that particular one to see if the putty was new?

A. Positively not.

Q. You did not think it was important?

A. It was not important.

Q. How many of the agents had revolvers in their hands when you entered the room at 138 Union Street on the 16th?

A. I don't know.

Q. Well, there were a great many, weren't there?

A. I don't know.

Q. Well, did you see anybody else with a revolver in their hands?

A. I did.

Q. How many were there who had revolvers in their hands?

A. One.

Q. Who was that?

A. Officer Oyler.

Q. Where did you see Nunzio last night?

A. At Court and Union Street.

Q. On the night that these defendants were placed under arrest, I understood you to say that you took them and lined them all up against the wall?

A. I did not, no; we all did.

Q. All of you did, you and your brother officers?

A. Yes, sir.

Q. You lined Nunzio up also?

A. Not me, no.

[fol. 170] Q. Well, did any of your brother officers line him up against the wall?

A. I don't know.

Q. Wasn't a pretense or something in the way of ceremony gone through of arresting Nunzio?

A. That was later, yes.

Q. Right in the room?

A. No, we had enough to do around there without fooling with Nunzio at that time.

Q. When was it that you attempted to place Nunzio under arrest?

- A. After we searched all the men and got the narcotics.
 Q. Was it in the same room?
 A. Yes.
 Q. It was in the same room?
 A. It was.
 Q. Right in the presence of everybody?
 A. Yes.
 Q. You said, "We are going to lock you up?"
 A. May have, yes.
 Q. That was said, wasn't it?
 A. I don't know who it was said by.
 Q. You heard it said, didn't you?
 A. Yes.
 Q. You took him out of the room?
 A. I did not.
 Q. Well, did one of your brother officers take him out?
 A. I don't know.
 Q. Did you see him walk out?
 A. I did not.
 Q. Who was the first to leave the premises?
 A. When?
 Q. On the 16th of January, after you had put them all under arrest?
 A. The defendants, and one, two or three officers.
 Q. Did Nunzio leave them?
 A. He did not.
 Q. Did Nunzio stay with you?
 A. He did.
 Q. Before the defendants left, either you or your brother officers, you said to Nunzio that he was under arrest?
 A. Not before, no.
 Q. At the time they left, didn't you want to create the impression that Nunzio was also under arrest?
 A. We did create it, yes.
 [fol. 171] Q. You wanted to create that impression? A. Positively.
 Q. After you arrived at 138 Union Street on the 16th of January, for how long a time did you remain outside the premises? A. About half an hour.
 Q. Where did you go after that? A. To 172 Columbia Street.
 Q. How long did you remain there? A. A very few minutes, a minute or two minutes.
 Q. Then where did you go? A. To 167 Columbia Street.
 Q. To 167 Columbia Street? A. Yes, sir.
 Q. Which of these defendants was the first one that you saw after you left 167 Columbia Street? A. I saw all of them.
 Q. Were they all walking together? A. They all came out together.
 Q. Out of where? A. Out of 167 Columbia Street.
 Q. Did you say anything to them then? A. No, sir.
 Q. What did you say? A. I said, "No, sir."

Q. When was the first time that you spoke with the defendant, Thomas Agnello? A. In the room after the arrest.

Q. Of course you know just what testimony is necessary to make a case in a violation of this statute? A. Yes.

Q. Of course, you did not ask to reduce any of this so-called statement or confession of his to writing and to sign it, did you? A. Reduce it?

Q. Did you ask him to sign any written statement? A. No.

Q. I want you to tell me, Officer Manning, the words which the defendant, Thomas Agnello, used; don't tell me what you or Oyler [fol. 172] said; I want you to tell in your own words what he said. A. That is impossible.

Q. You have not rehearsed that, of course?

Mr. Brancato: I object to that remark of counsel.

The Court: Objection sustained.

Mr. Brancato: I ask the Court to instruct the jury to disregard that.

The Court: Disregard that, gentlemen.

By Mr. Kesselman:

Q. Is it because you have made a statement already including what you said and what you claim the defendant said, that is the only thing you can testify to? A. I don't understand the question.

Q. You understand the first word, don't you? The first few words, "Is it because"? Is there anything which you cannot understand about that? A. No.

Q. Now, is there anything in the next few words that you don't understand? A. I don't understand the question at all, now.

Q. Tell us what you understand? A. I don't understand what you want.

Q. I want to have the stenographer read the question to you and you tell me any one, two or three words in there which you don't understand? A. I cannot answer that.

Q. The stenographer is going to read the question to you. A. If he reads but one or two words, I cannot get the stuff.

The Court: He is going to read the entire question.

(The last question was repeated by the reporter.)

[fol. 173] By Mr. Kesselman:

Q. Now, tell me what word or set of words there are in that question which you do not understand? A. About the statement.

Q. The word "statement" is generally understood? A. Yes, sir.

Q. You testified to a statement which you claim that the defendant Thomas Agnello made? A. Yes, sir.

Q. Is that what you did not understand, the word "statement"? A. No, I understand it now.

Q. Tell me what there is in the question which I have made which you cannot understand? A. I did not know which way you wanted

it; you wanted it in the words. This morning I stated I cannot give that. I can give you that he offered two thousand dollars.

Mr. Kesselman: I move to strike that out. You know that pretty well.

The Witness: Yes, I certainly do.

By Mr. Kesselman:

Q. Tell me what he said; give me the words of this defendant.
A. Just give me a moment's time and I will do the best I can.

Q. Yes, go ahead. A. "Can't we do business?" Or "business" was mentioned, I am positive.

Q. The word "business" was mentioned? A. Positively.

Q. Go ahead. A. And the word "turn out" was used.

Q. Those are the only two words that you can remember of everything that he said? A. Yes.

Q. That is all? A. And the two thousand dollars.

[fol. 174] Q. That is the word "business," the words "turn out" and "two thousand dollars"? A. Yes, sir.

Q. That is all that you can remember of the words which the defendant used? A. He may have used others.

Q. Is that correct? I asked you if that is all that you can remember of the words which the defendant used? A. That is why I am confused. I cannot give the statement that you want.

Q. You are confused again, Mr. Manning, are you? A. In the statement that he made, yes.

Q. You are confused again, are you? A. Yes, sir.

Q. What causes all this confusion? A. The way that you want the question answered, that I cannot give.

Q. You are confused because I asked you to tell the Court and jury the words which this defendant used? A. Yes.

Q. Is that correct? Is that the reason? A. That is almost the way he said it; I don't remember.

Q. You are confused because I asked you to tell the Court and jury the words this defendant used; is that correct? A. Not confused in that except the way he said it. I cannot give it word for word.

Q. Didn't you just say that you are confused?

Mr. Brancato: I object, if the Court please. The witness said "I cannot give it word for word, verbatim."

By Mr. Kesselman:

Q. But you can give us his four words—I will withdraw that question.

[fol. 175] Mr. Kesselman: A man's liberty is at stake and we should get something more than the substance in a case of this kind.

Mr. Brancato: You cannot expect a man to testify four months afterwards.

Mr. Kesselman: Four months after? It is not two months yet.

Mr. Brancato: All right; two months.

By Mr. Kesselman:

Q. All that you can remember is the four words which you have just testified to? A. All I can remember is the offer of \$2,000.

Mr. Kesselman: I move to strike that out.

The Court: Motion granted.

By Mr. Kesselman:

Q. All you can remember are the words "turn out," "business" and "\$2,000," is that correct? A. Yes, sir.

Mr. Kesselman: That is all.

The Court: Has the other defendant any questions to ask?

Mr. Wackerman: No, except at this time I desire to renew my motion to strike out all of the witness's testimony on two grounds; on the first ground I will move to strike out all of the evidence that was obtained after they went into this room on the first occasion because it was obtained illegally.

The Court: On the first occasion?

Mr. Wackerman: When they went in after looking through the window; that is on the 16th.

Mr. Price: I make the same motion on behalf of Centorino.

[fol. 176] Mr. Kesselman: I make the same motion on behalf of my defendants.

The Court: Motion denied.

Mr. Brancato: There is proof of sale.

Mr. Wackerman: There is no proof of a sale; there is no proof that these agents knew that a crime was being committed.

The Court: Motion denied.

Exception to each of the defendants.

Mr. Wackerman: I move to strike out all of the testimony on the ground that the Government has failed to prove the conspiracy, none of this evidence being binding on the defendants.

The Court: Motion denied with leave to renew.

Mr. Wackerman: Exception. I understand your Honor is ruling that Mr. Brancato will continue indefinitely in an endeavor to prove this conspiracy.

The Court: Not indefinitely, but until he has exhausted his proof, keeping within reasonable bounds.

Mr. Wackerman: I have an exception to that.

The Court: Yes.

The defendants will be held strictly in regards to anything brought out on re-direct.

Mr. Price: I want to ask two or three questions before I am through with him.

The Court: All right.

By Mr. Price:

Q. You say the money was given to Napolitano in Mr. Oyler's office, do you, about five o'clock? A. Yes.

[fol. 177] Q. What time did you leave the building? A. I don't remember the exact time.

Q. Was it about five o'clock? A. It may have been nearer four.

Q. It was not later than five, was it? A. Between four and five.

Q. You saw Napolitano at that time take the money and put it in his pocket? A. Yes.

Q. And this is Monday night I am talking about. A. Yes.

Q. You do not misunderstand me on that? A. No.

Q. So that if Napolitano testified here yesterday that Oyler gave him the money at his office at seven or seven fifteen o'clock in the evening, you would say that is not the fact, would you? A. I would not say it is not a fact, no.

Q. You say it happened between four and five? A. That is to the best of my ability, yes.

Q. So then it was not seven or seven fifteen, was it? A. I did not say that.

Q. I say if Mr. Napolitano said that, that is not the fact?

Mr. Brancato: I object to the question upon the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

(The last question was repeated by the reporter.)

A. No.

Mr. Price: That is all.

Redirect examination by Mr. Brancato:

Q. You were asked something about what constitutes the crime of attempted bribery or bribery; was there any money offered to you [fol. 178] and the money exhibited to you by this man Agnello in the back room behind room "A," the kitchen? A. There was not.

Q. You know, as a matter of fact, that you cannot make an arrest for a charge of bribery unless the money is actually handed or offered to you? A. Positively.

Mr. Wackerman: That is objected to as incompetent, irrelevant and immaterial. Mr. Brancato does not know that himself.

Mr. Brancato: I don't.

Mr. Wackerman: No, you don't. If you pass money that is bribery; it is not attempted bribery.

The Court: Well, we won't go into that.

Mr. Wackerman: You start to propound a legal proposition to this witness.

By Mr. Brancato:

Q. Do you know as a matter of fact that in the Federal Statutes, there is no attempted bribery?

Mr. Wackerman: I object to that: it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Brancato:

Q. Did you at the time that you had a talk with Agnello believe that he had committed a crime?

Mr. Kesselman: I object to it upon the ground that it is incompetent, irrelevant and immaterial. If the Court is going to exclude any evidence or testimony of there not being any attempted crime, then I submit the jury should be instructed to disregard all of the [fol. 179] testimony, because Mr. Brancato himself first brought it out on direct examination.

The Court: Yes, the Government has offered proof that there was money offered by one of the defendants to this witness. The defense has attempted to show that the witness made no attempt to arrest the defendant who offered the money, suggesting that the witness made no attempt to make an arrest, although the act of offering the money was a crime. It seems to the Court proper to ask the witness whether he believed it was a crime or not. That is Mr. Brancato's question.

Mr. Brancato: That is my question exactly.

The Court: It is an operation of his mind, but at the same time it indicates the reason why he did not make the arrest, if he did not believe that a crime was being committed, then, of course, there can be recross-examination.

Mr. Kesselman: He knew it was a crime; he said so.

Mr. Brancato: He did not know it was a crime.

Mr. Price: There never was a state of facts in any court of law or justice where a witness was allowed to give the jury the operation of his mind.

The Court: If the defense makes any point of the fact that the witness made no arrest, it seems to the Court then proper for the witness to state what he believed.

Mr. Kesselman: I was compelled to ask him about it because [fol. 180] Mr. Brancato brought it out on direct examination. I did not think it had any place in the record at all.

The Court: Only against the defendant, Thomas Agnello.

Mr. Brancato: Not to show that he committed a second crime, but a man who was willing to buy—

Mr. Kesselman: Wait a minute, do not make any speeches about buying.

The Court: The Court only admitted it as part of the *res gestæ*.

Mr. Brancato: That is all, not of a separate crime being committed.

Mr. Kesselman: Your Honor could not admit it as part of the *res gestæ*; the *res gestæ* is the crime itself.

The Court: Certainly.

Mr. Price: The crime was completed just as soon as the arrest was made. The officers, by making the arrest, stopped the operation of the conspiracy if there was a conspiracy. What happened after that terminating of the conspiracy, nothing else would be admissible.

The Court: Yes, but the offering of the money may well be construed as an admission by the defendant offering the money, of the guilt of this crime.

Mr. Kesselman: But up to this time the defendant Thomas Agnello had not done anything; there was not any money found on his person.

The Court: No, but he was——

Mr. Kesselman (interrupting): He had not sold any or offered to sell any——

The Court: He was with them.

[fol. 181] Mr. Kesselman: I might be with them also; I might be with a thousand of the worst characters——

Mr. Brancato: That is a matter of argument with the jury.

The Court: The jury would not believe it of counsel.

Mr. Kesselman: I say this, that if the defendant Thomas Agnello—I contend that he had not at that time committed any crime and he could not bribe anybody for doing something which was not legal.

The Court: It is for the jury to determine whether he is connected with the crime or not.

By Mr. Brancato:

Q. Did you think that at the time that you had the talk with the defendant, Thomas Agnello, that he was committing a crime of bribery or attempted bribery?

Mr. Kesselman: Objected to on the ground that it is incompetent, irrelevant and immaterial and does not make any difference what he thinks; upon the further ground that it would give the operation of this witness's mind and would be a conclusion on his part.

The Court: Objection overruled.

Mr. Kesselman: Exception.

Mr. Kesselman: I am objecting to that on behalf of the defendant I represent and on the further ground that this witness is presumed to know the law; whether he thinks he knows it or not does not make any difference.

The Court: Objection overruled.

Mr. Kesselman: Exception.

[fol. 182] Mr. Price: I make the same objection, that it is not binding on the defendant Centorino.

The Court: Objection overruled.

Mr. Price: Exception. It is a declaration made after the termination of the conspiracy.

Mr. Wackerman: I make the same objection on behalf of the defendants I represent.

The Court: Objection overruled.

Mr. Wackerman: Exception.

(The last question was repeated by the reporter.)

A. I did not.

Mr. Brancato: That is all.

Recross-examination by Mr. Price:

Q. I just want to ask one question; at the time of this alleged conversation, which of the other agents was in the room with you talking to Agnello?

A. I think it was Officer Pacetta.

Q. Is that your best answer, you think it is Officer Pacetta?

A. Positively.

Q. Was it Pacetta?

Mr. Kesselman: Leave the answer well enough alone.

Mr. Price: Let him answer my question.

Mr. Brancato: There is nothing mysterious about that question.

The Court: Let us proceed.

Mr. Price: I asked him a question.

The Court: What is the answer?

A. I don't know.

By Mr. Price:

Q. You say you don't know who was there?

A. No.

[fol. 183] Q. Your best recollection, however, is Pacetta?

A. Yes, sir.

Re-redirect examination by Mr. Brancato:

Q. Now, Mr. Manning, when you said Pacetta, is your best recollection, do you wish to exclude yourself and Oyler?

Mr. Price: That is unfair.

Mr. Brancato: That is a trick question that they put to him, Judge.

The Court: What is it?

Mr. Price: I submit that is highly reprehensible.

The Court: First have an objection recorded.

Mr. Price: I submit the statement of Mr. Brancato is highly reprehensible.

Mr. Kesselman: I object to it upon the ground that it is leading.

The Court: Objection sustained.

Mr. Price: I ask your Honor to tell Mr. Brancato to make no more statements about "trick" questions, if I ask a man a simple question.

The Court: Motion granted.

Mr. Brancato: Now, if the Court please, the testimony shows here, and I challenge the record, where this witness on direct examination testified that he and Oyler had a talk with this man Agnello in this particular room.

The Court: The jury undoubtedly remember that.

Mr. Brancato: Now the question is put by Mr. Price as to who else was in that room.

Mr. Kesselman: He said himself and Mr. Pacetta.

[fol. 184] Mr. Brancato: The witness said he does not remember,

giving the inference that Oyler was not there. Mr. Kesselman stands here and says, "Let well enough alone."

Mr. Kesselman: Certainly.

Mr. Brancato: We have to have these facts; we want the truth.

The Court: Ask him if he wants to change his testimony.

Mr. Brancato: It is not any change of testimony.

The Court: With regard to Oyler's presence.

Mr. Kesselman: This witness was asked a plain question, who was there besides yourself, and he said, without any qualification, "Pacetta."

Mr. Brancato: That is not the question.

Mr. Kesselman: Let us have the record read.

The Court: Will you give way to Mr. Kesselman, Mr. Price?

Mr. Price: Yes.

Mr. Kesselman: When I saw that answer being made I had in mind that the witness had previously testified that Oyler was there. I told Mr. Price this and motioned to him to leave well enough alone. It is my duty to my clients and my duty to myself; I asked him to stop. Of course Mr. Brancato saw the error which the witness had made. Now, let us read the record.

Mr. Brancato: I did not see any mistake that the witness had made.

The Court: The motion to have the record read is denied. The Court will ask the witness, who was present, if you remember, at the [fol. 185] time that this conversation was had, to which reference has been just made?

The Witness: Officer Oyler and I.

By the Court:

Q. Do you remember anybody else?

A. While we were talking to him, another officer came in, but I cannot recall who he was. He just came in when I was there talking and went out.

Re-recross-examination by Mr. Price:

Q. Didn't I ask you who was in the room besides yourself at the time that the defendant Thomas Agnello made a statement to you?

A. I told you.

Q. Didn't I ask you that, yes or no?

The Court: If you remember.

A. I don't remember.

By Mr. Price:

Q. Do you say that you don't remember because the Judge said, "If you remember?"

Mr. Brancato: I object to that statement. I will ask that the record be read.

The Court: Objection overruled. The question is before the witness.

By Mr. Price:

Q. Didn't you state to me that the man in the room besides yourself was Pacetta? Didn't you?

A. Not that I recall.

Mr. Price: I ask your Honor to have that part of his record read.

Mr. Brancato: Please give him a chance to finish his answer.

The Court: Did you finish the answer?

[fol. 186] The Witness: I did, just now.

Mr. Brancato: Not at the time.

Mr. Price: I ask your Honor to have that part of his testimony read.

The Court: Motion denied.

Mr. Price: Exception.

Mr. Brancato: That is all.

Mr. Price: That is all.

RALPH OYLER, called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. Mr. Oyler, what is your business?

A. Narcotic Agent.

Q. In this district?

A. Yes, sir; in charge of the New York District.

Q. You are in charge of the Narcotic Squad?

A. Yes, sir.

Q. Where is your office?

A. The old Post Office Building, Room 516, New York.

Q. How long have you been in charge of the Narcotic Division?

A. The last time in New York for about eight months.

Q. How long have you been in the Narcotic Service of the Internal Revenue Department?

A. Since 1915.

Q. Do you know these defendants here on trial?

A. I do, yes, sir.

Q. What is the first time that you saw any of them?

A. The 16th day of January, 1922.

Q. Where was the first time that you saw them?

A. I saw Alba and the one with the mustache—

Q. Centorino?

A. Centorino, at 138 Union Street, Brooklyn, New York.

[fol. 187] Q. And how many agents went with you on January 16th, 1922, at the time that you say you saw those two defendants, Alba and Centorino?

A. Six, I think.

Q. Give us their names, please.

A. Manning, Conrrolly, Pacetta, McCormick, Mellon. I think that is all the agents.

Q. And yourself?

A. And myself included. I had a party by the name of Moog at that time, who is now an agent. He was on the New York Police Force at that time.

Mr. Price: I move to strike out the answer on the ground that it is incompetent, irrelevant and immaterial.

The Court: Granted.

A. That is all the agents, I think.

By Mr. Brancato:

Q. Was there any other people who are not agents; were there any other persons who were not agents?

A. Three.

Q. Who are they?

A. Pasquale Napolitano, I don't recall the other boy's name right now.

Q. Nunzio?

A. Nunzio, and Moog, the police officer.

Q. What is that?

A. Moog at that time was a police officer.

Mr. Price: I move to strike that out.

Mr. Brancato: I consent.

By Mr. Brancato:

Q. What time did you get to the vicinity of 138 Union Street?

A. Some time after eight o'clock; shortly after eight o'clock; I won't try to tell you the exact minute.

[fol. 188] Q. How did you get to Union Street?

A. If I remember correctly, we left the office in the old Post Office Building, New York, and took a street car at Brooklyn Bridge; went out several blocks, may be five or six blocks, and walked down, if my memory is correct on that.

Q. You got off at Union Street and you walked some blocks until you got down to 138 Union Street.

A. I won't say we got off at Union Street, although we walked on down. I think may be it was Union Street we got off. I don't know Brooklyn very well.

Q. Wasn't it the same street that this house was in, Number 138, that you got off at?

A. I think it was.

Q. Did you all get off together?

A. I think we all got off at that block, yes.

Q. Then what happened after you got off the car?

A. Patsy Napolitano and Nunzio were sent ahead. We split up and followed them on down to 138, where they entered. We sta-

tioned ourselves around in different vicinities where we could watch the house.

Mr. Price: I move to strike that out as a conclusion.

By Mr. Brancato:

Q. They could watch the house from where they were located?

The Court: He may state that he could watch the house, but no one else.

By Mr. Brancato:

Q. The men were placed in the vicinity or nearby 138 Union Street?

A. They were, yes, sir.

[fol. 139] Q. From the place where you were stationed, could you see 138 Union Street?

A. I could, yes, sir.

Q. Now, did you see Napolitano and Nunzio enter 138 Union Street?

A. I did, yes, sir.

Q. Do you remember the time of the arrest, the actual time of the arrest? I do not mean the minute, but do you remember the time the arrest was made?

A. It was after nine o'clock.

Q. Now, from the time that you saw Napolitano and Nunzio enter 138 Union Street about eight o'clock, when you first got there, until the actual arrest was made, did you see Napolitano and Nunzio?

A. I did, yes, sir.

Q. Where?

A. Saw them several times in the house and once on the street.

Q. When you say "once on the street" how far away from the entrance of 138 Union Street do you mean?

A. Out in the middle of the street. Four of them came out in the middle of the street. Centorino, the man with the mustache, Alba, Patsy and Nunzio came out in the middle of the street and after some argument—

Mr. Price: I move to strike out "after some argument."

The Court: Motion granted.

By Mr. Brancato:

Q. What were they doing?

A. They were talking together.

Q. How long, about, were they talking together?

A. I should say about three or four minutes.

Q. Now, you did not have a watch out, did you, to time them?

A. I did not, no, sir.

Q. And after having this talk, what did they do?

A. Three of them went back in the house.

[fol. 190] Q. Who are the three?

A. Alba, Patsy and Nunzio.

Q. Went back to the house, which house do you mean?

A. Number 138.

Q. That is the house that they had left?

A. Yes, sir.

Q. What did Centorino do?

A. He went on down to Columbia Street.

Q. What did you do?

A. Followed him.

Q. Followed whom?

A. The man with the mustache.

Q. Centorino?

A. Yes, sir; Centorino.

Q. Where did he go?

A. To 167 Columbia Street.

Q. Did you see him again after he went in?

A. I did, about, I should say, ten minutes.

Q. What did he do?

A. He came out with three other men. He came back up to the house and entered.

Q. This place at Number 167, is it a store?

A. Yes, sir; in front.

Q. What kind of a store is it?

A. A small Italian store; a kind of grocery store, I should say.

Q. On Columbia Street?

A. Yes.

Q. Did you see what Centorino was doing inside this store, this particular grocery store?

A. I could not. He went back, talked to somebody in the front and then went on in the back; that is the next thing I can say.

Q. Just about where were you at the time that you saw him enter this grocery store and go to the back?

A. I was across the street, walked diagonally across the street when he entered. I walked past the store.

Q. How long did you wait there until Centorino came out?

A. I did cross the street, sir.

[fol. 191] Q. How long did you wait before you saw Centorino come out?

A. I should say ten or fifteen minutes; I won't be exact on that.

Q. When he came out did anybody else come out?

A. Three other men came out with him.

Q. Who are the other men who came out with him?

A. The two younger defendants and the crippled man.

Q. Just tell us——

By Mr. Price:

Q. Thomas Agnello and Frank Agnello and Pace, is that what you mean?

A. Yes, sir; that is who I mean, yes, sir.

By Mr. Brancato:

Q. You mean Pace and the two Agnello brothers?

A. Yes, sir; that is right.

Q. They came out together, did they?

A. Yes, sir.

Q. Were they talking or what were they doing?

A. Well, I don't know whether they were talking or not. They were together when they came out.

Q. What did they do then when they came out of the store?

A. They went on up Columbia Street to Union Street; up Union, where they went in to 138 Union Street.

Q. Did you follow them?

A. I did, yes.

Q. Now, then, after they got back to 138 Union Street, where did you go?

A. I was across the street for a few minutes, and walked past the house, and Officer Manning, Narcotic Agent Manning, rather, and Pacetta, I told them to watch in the window.

Mr. Price: No, strike that out.

The Court: Yes.

[fol. 192] By Mr. Brancato:

Q. You spoke to him?

A. Yes, sir; I did.

Q. What did you do?

A. I lay out the rest of the agents that I had there that accompanied me to the door.

Q. Which door?

A. I was close enough at the time to hear them lock the doors when they went in.

Q. Which door?

A. I mean the second door of the hallway.

Q. This hallway at 138, has it got a vestibule?

A. It has, if I remember correctly, a small vestibule.

Q. How many doors are there in this vestibule before you can get into the hall door of the premises?

A. A door right on the street; another door, I should say, may be six feet, may be five feet, into the hall.

Q. And then from the hall there is another door leading into Alba's apartments?

A. There is, yes, to the right.

Q. Now, were you in the vestibule after the three defendants got in?

Mr. Price: I submit now, without any further leading, that he tell us his story.

The Court: Yes.

By Mr. Brancato:

Q. Just tell us what happened, what you saw, where you went, after these men got into the apartment of Alba. You had this talk with your agents; just tell what you did, who was with you and as to where you went.

A. We waited two or three minutes after they were in; not over five minutes, long enough until—I won't testify to that, pardon me [fol. 193] —after waiting about five minutes we kicked the first door in and got to Alba's apartment, entered the—kicked the door in to his apartment. At that time Officer Manning had fired a shot from the outside, or a shot had been fired. We got all the defendants to what was found there, he limit the testimony to the packages. blue packages—

Mr. Kesselman: I will at this time ask Mr. Brancato and your Honor to instruct this witness that whenever he starts to testify as to what was found there, he limit the testimony to the packages.

The Court: Yes, please do that.

Mr. Brancato: I have endeavored to do that from the beginning of the trial.

Mr. Kesselman: Yes, I know that, Mr. Brancato.

The Court: The point is that you are not to state anything else that was found inside the packages about which you have just referred.

The Witness: Yes, sir.

A. (Witness continuing:) Three packages, blue packages, were laying on the table in the second room as you come into the apartment. The first room is a kitchen. There is a little room—

By Mr. Brancato:

Q. (Interrupting.) I show you Defendant's Exhibit A, which purports to represent the outside of that house, what letter on that picture would you say is the kitchen?

A. The letter "A."

Q. And the letter "B" is a room adjacent to the kitchen, is that right?

A. It is, yes, sir.

Q. After you kicked in this door leading into the kitchen, you [fol. 194] said you went inside, what room would you pass?

A. Went through the kitchen.

Q. Into where?

A. I should call it a dining room.

Q. Well, what room, indicated on that picture?

A. The letter "B".

Q. Room "B"?

A. Yes, sir.

Q. Who was in room "B" at the time you went in?

Mr. Wackerman: At this time I am formally objecting to anything that took place in this room on the ground that they entered illegally, an illegal seizure and search.

The Court: Objection overruled.

Mr. Wackerman: Exception.

A. The five defendants, Napolitano and Nunzio.

By Mr. Brancato:

Q. Now, please tell us what you saw any of these defendants do, after you got in that room, what you found and where you found it, limiting yourself, however, to packages.

Mr. Price: I make the same objection as was made previously, and as incompetent, irrelevant and immaterial, not binding on my defendant, Centorino and on the further ground of an illegal search and seizure.

The Court: Denied upon the second ground. Denied on the first ground with leave to renew.

Mr. Price: Exception.

Mr. Wackerman: I make it on behalf of my defendants, the formal objection on the ground that they have not proved any conspiracy.

[fol. 195] The Court: Motion denied.

Mr. Wackerman: Exception.

The Court: With leave to renew.

A. Three of the packages, of the blue packages, were on the table; one package was in the back bed room, the bed room leading off of the room marked "B." The rest of the packages were found on the young defendant.

By Mr. Brancato:

Q. Frank Agnello?

A. Yes.

Mr. Wackerman: I am objecting to anything found on the person of Frank Agnello, first on the ground that it is an illegal search and second on the ground that the Government has not proved a conspiracy.

The Court: Motion denied.

Mr. Wackerman: Exception.

By Mr. Brancato:

Q. Tell us more in detail of what took place after you got in there and you found this stuff, as you say?

A. The defendants were all searched, one by one. On this defendant we found the narcotics—

Mr. Price: I move to strike out the word "narcotics."

The Court: Granted.

By Mr. Brancato:

Q. Use the word "packages"?

A. He was questioned as to where he got the packages. He said some man gave them to him and gave him five dollars to bring them up. Alba—Pardon me, may I ask a question? Regarding any other search or only as to narcotics.

[fol. 196] Q. Confine yourself to narcotics and money, if you found any money.

A. Yes. Agent Manning searched Alba. On Alba he found the roll of money which had been previously——

Q. All right. He found some money there?

A. Yes, sir. One defendant, the oldest brother——

Q. Thomas Agnello?

A. Yes——said he wanted to talk to me. Officer Manning and I talked to him in the back room leading off of "A."

Q. That is, in back of the kitchen?

A. Yes, sir; where he wanted to fix things up.

Mr. Kesselman: I move to strike out the answer on the ground that it is a conclusion on the part of the witness.

The Court: Motion granted. This is received only against the defendant making the statement.

A. He wanted to give us \$2,000——

Mr. Kesselman: I object to that.

The Court: No. What, if anything, did he say?

By Mr. Brancato:

Q. Tell us what he said, if you can use his own words, as far as possible?

A. He asked us if we could fix things up so that there would not be a pinch of him and his younger brother and Pace. He said he would give \$2,000. He said he had been in trouble and had been away——

Mr. Kesselman: No, I move to strike that out as highly improper. It has not anything to do with any packages here. It is a very improper way of getting something before the jury, an indirect way of getting something before the jury which they cannot do directly. [fol. 197] The Court: I will strike it out.

Mr. Kesselman: I ask your Honor to instruct the jury to disregard that.

The Court: Motion granted.

Mr. Brancato: I won't insist on it. I think we might be right if that was a conversation or statement made by the defendant, I think we have the right to use it, yet I won't insist on it.

The Court: No, go right on.

I think we had better take a recess for luncheon until two o'clock.

Recess was taken until two o'clock.

After Recess

RALPH OYLER resumes the stand for further direct examination:

The Court: Mr. Stenographer, please read back the last few questions and answers.

Direct examination by Mr. Brancato (continued):

Q. Now this conversation, which has just been read from the record, I understand you had with Thomas Agnello?

A. Yes, sir.

Q. And that was in the room back of the kitchen, room "A"?

A. It was.

Q. What other agent was with you at the time that this conversation took place?

A. Agent Manning.

Q. After you had this talk with the defendant Thomas Agnello, did you again take him back to room "B"?

A. Yes, sir; I did.

Q. What took place there?

A. Then we brought out the defendant with the mustache.

Q. Centorino?

A. Centorino.

[fol. 198] Q. What took place; what conversation did you have, if any?

A. Asked him what he knew regarding the—

Mr. Kesselman: I object to it on behalf of the defendants Agnello and Pace on the ground that it is incompetent, irrelevant and immaterial and not binding on them.

The Court: That is right; only as to the defendant with whom the conversation was had.

A. (Continuing:) Asked him what he knew about narcotics, or about the packages.

Mr. Price: Just a moment, before he relates any conversation with this defendant Centorino, I ask your Honor to permit me to cross examine him.

The Court: Upon what ground?

Mr. Price: On the ground that a statement made by the defendant could not be used against him.

The Court: Motion denied.

Mr. Price: I except. I believe the defendant was under arrest at that time.

The Court: Is that the ground, as to whether there might have been duress?

Mr. Price: Yes.

The Court: Motion granted. Just step aside and we will find out if there is anything of that character in the case.

Mr. Brancato: Any duress?

Mr. Price: I say the defendant was under arrest. My contention is that anything that he said cannot be used against him.

The Court: All right: Ask the question.

[fol. 199] By Mr. Price:

Q. Was the defendant under arrest?

A. There had not been anybody placed under arrest.

Q. You took them all and stuck them up against the wall?

A. Yes, we arrested them, we took them to the station house.

Q. You arrested them in the premises as soon as you came in, didn't you?

A. We arrested them there.

Q. Yes, you stuck them all up against the wall?

A. We did, and searched them all.

Q. And told them they were under arrest?

A. I did not.

Q. But they were, as a matter of fact under arrest, weren't they?

A. Well, they did not leave any place; they went and done what we told them.

Q. You know what arrest means?

A. I do.

Q. You had arrested them as soon as you got inside?

A. I would not say we had, no.

Q. You restrained them, would not allow them to move, would you?

A. Certainly.

Q. You considered them at that time time your prisoners, didn't you?

A. I did not arrest anybody until I found out all I could.

Q. But they were under legal restraint at that time?

Mr. Brancato: I object to that question.

The Court: Objection sustained.

Mr. Price: He said so.

Mr. Brancato: He did not say anything of the kind.

By Mr. Price:

Q. Do you mean to tell the jury that you did not arrest them [fol. 200] right then and there as soon as you went inside?

A. If I did, in the room? I did not make an arrest; I wanted to know who they were; then I arrested all of them afterwards.

Mr. Price: I object to this on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: I except.

By Mr. Brancato:

Q. Tell us, Mr. Oyler, the conversation that you had with Centorino?

A. Centorino was called in the room. Agent Manning and I

questioned him as to what he knew about these packages, as to where he went on leaving 138. He told us about Alba coming to his house and getting him. He said he had stopped in the store—

Mr. Price: Just a moment. You are talking too fast.

Mr. Brancato: I submit that the stenographer is the Official Stenographer, and if he is not talking too fast for him, counsel should not ask him to wait until he has it down.

The Court: Objection overruled. Counsel cannot hear what the witness says.

Mr. Price: I did not hear it.

Mr. Brancato: That is different.

A. (Continuing:) He said he knew nothing about the packages at all and had nothing to do with the sale of the narcotics or the sale of the packages.

By Mr. Brancato:

Q. Centorino said that?

A. Centorino said that, yes, sir.

[fol. 201] Q. What else did he say?

A. I asked him if he knew the other defendants and he said he did.

Q. Any thing else said; any other questions put to him?

A. There might have been some others, but I do not recall.

Q. Did you have a talk with the defendant Pace?

A. We did, yes, sir.

Q. Where?

A. In the small room—well, I talked to him first in the room marked "B."

Q. That is the room adjacent to the kitchen?

A. Yes, sir. Asked him what business he was in.

Mr. Wackerman: Just a minute, that is objected to on the part of the defendants I represent.

The Court: That is only received with relation to whom the conversation was had.

Mr. Wackerman: Does your Honor's ruling apply to all these conversations?

The Court: Yes, sir.

Mr. Wackerman: I won't make any further objections then.

A. (Continuing:) I asked him what business he is in. I might state here that we found a card on him that showed—

Mr. Kesselman: Now, now—

The Court: Just state the conversation.

A. He said he was in the import and export business.

By Mr. Brancato:

Q. Did he say where his place of business was?

A. I asked him where his place of business was, and he said, "No. 167 Columbia Street." I said, "That is the same house they brought the narcotics out of"—

[fol. 202] The Court: Is that what you said to him?

The Witness: Yes.

Mr. Kesselman: I object and move to strike out the answer.

The Court: Motion denied.

Mr. Kesselman: Exception.

Mr. Price: I make the same objection.

The Court: Objection overruled.

Mr. Price: I except.

A. (Continuing:) I said, "What do you import? Narcotics?"
He would not answer.

Mr. Price: I move to strike out the answer on the ground that it is a conclusion of the witness.

The Court: Motion granted.

By Mr. Brancato:

Q. Did he answer?

A. He did not. He refused to answer any more questions.

Mr. Price: I move to strike that out on the ground that it is a conclusion.

The Court: Motion granted. Just state what the defendant said, if anything.

By Mr. Brancato:

Q. At the time that you asked him, "Is that the same house from which they took the narcotics?" did he make an answer to that question?

A. He did not.

Mr. Price: There is no evidence here that anybody took any narcotics from this house and I say that the statement or question of the District Attorney is improper and I move to strike it out.

The Court: Motion denied.

[fol. 203] Mr. Price: I except.

The Court: I understand that this is a conversation that you had with the defendant?

The Witness: With the defendant, yes, sir.

The Court: It may remain in the record as against that defendant only.

Mr. Brancato: Yes, sir.

By Mr. Brancato:

Q. Will you just state the question that you put to Pace at the time that you had the conversation with him? Let us have it correctly on the record what the question was and what the answer was?

A. What I have already testified to.

Q. What was the question that you put to him?

A. He said he was in the import and export business. I asked him whether he imported narcotics and he refused to answer.

Mr. Kesselman: I move to strike that out.

The Court: Motion granted.

A. (Continuing:) I asked him where his place of business was and he said at Number 167 Columbia Street. I asked, "That is the house that the narcotics came out of?" He did not answer.

Mr. Kesselman: I move to strike out the last statement of the witness upon the ground that it is incompetent, irrelevant and immaterial and not binding on the defendants. He might say anything that he wanted.

The Court: Motion granted. I am striking out the last question put by the witness to the defendant.

[fol. 204] By Mr. Brancato:

Q. Did you have any other conversation with him?

A. At that time Frank—the largest brother Agnello.

Q. Thomas Agnello, the largest one?

A. Yes, sir. Thomas is the older brother?

Q. Yes. The one in the center there—is that the man that you mean?

A. Yes.

Q. That is Tom.

A. He came over with Pace. He said that he and Pace were partners. I asked Pace if that was right and he said "Yes." I then asked them where they lived, again, and they said at 167. I informed him that we were going to search that house, they said, "All right." I don't know that there is any more conversation or not among those three defendants. The younger Agnello boy was questioned regarding where he got the packages. He stated some man gave him, was to give him five dollars to carry them up to the house. I asked him how he met the other men at the appointed time and he said he just met them. Alba, the older gentleman of the defendants, was questioned, and pleaded not to be arrested, saying that he was under arrest now on a narcotic charge in New York.

Mr. Price: I object to that and ask that it be stricken out.

The Court: Strike it out.

Mr. Price: I ask your Honor at this time to withdraw a juror. This man is an experienced, intelligent witness—

The Court: Therefore, I have stricken it out.

[fol. 205] Mr. Price: Will your Honor instruct the jury at this time to disregard the statement of this witness?

The Court: Yes.

Mr. Price: Will your Honor further instruct him not to make any statements of that kind in the future? They have not any right—

The Court: Yes.

Mr. Brancato: I submit—

The Court: I have considered it carefully. Proceed with the examination.

By Mr. Brancato:

Q. Was there any other conversation with this man Alba?

A. I asked him where the packages came from and where the connection was and he did not know. I asked him why these other four men had come to his house with the narcotics. He did not know. There might have been other conversation at this time that I cannot recall.

Q. Who searched Alba when you men got in there?

A. Agent Manning.

Q. Was there any money found on him?

A. There was, yes.

Q. What was done with that money that Manning found; what did Manning do with the money?

A. If I remember correctly, Manning, Connolly and I checked it over with a list that we had of the numbers—

Mr. Price: I object to that. The question is, what did Manning do with the money?

A. He gave it to me.

By Mr. Brancato:

Q. I show you Government Exhibit 9 and ask you if you had [fol. 206] that exhibit, that paper, at the time that Manning handed the money over to you?

Mr. Wackerman: That is objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Wackerman: Exception.

A. There are two of them. I don't know whether I had this one. There is no writing on the top. There was writing here and that has been scratched out.

By Mr. Brancato:

Q. When you say "writing" do you mean "typewriting"?

A. Typewriting. That has been run through. We signed up, I think, two or may be three, the originals and the copies.

Q. The original and a carbon copy, is that right?

A. Yes.

Mr. Wackerman: I am objecting to that and move to strike it out as not responsive, not in answer to the question, entirely incompetent. He has testified to two or three carbon copies and certain typewriting. I move to strike it out.

The Court: Which is this one?

The Witness: This, I don't know whether this is the original or one of the copies of it. They made them out, the original and copies. We generally keep the originals and the copies so that two different officers can have them so we can check up the money.

Mr. Wackerman: I object to that entire statement and ask that it be stricken out, what they generally do.

The Court: Motion denied.

Mr. Wackerman: Exception.

[fol. 207] By Mr. Brancato:

Q. I show you this paper and ask you if you signed that paper?

A. I did, yes, sir. I also signed this one.

Q. You signed both of them?

A. Yes, sir.

Q. When did you sign the paper which I have just shown you?

Mr. Wackerman: That is objected to as incompetent, irrelevant and immaterial.

A. In the office, room 516, Post Office Building, New York, on the night of the 16th or the evening of the 16th, I should say about seven o'clock.

- By Mr. Brancato:

Q. Did you sign that paper which I have just shown you at the same time that you signed the paper now in evidence?

A. Signed them both at once, yes.

Mr. Brancato: I offer them in evidence now.

Mr. Price: I object to it with the exception of the typewriting, the typewritten letters or words which are stricken out.

Mr. Brancato: What is the use of encumbering the record.

Mr. Price: I object to it on the ground that there is one already in evidence.

Mr. Kesselman: I object to it on the ground that it is incompetent, irrelevant and immaterial.

Mr. Brancato: That should be either the original or carbon copy.

The Court: Objection overruled.

Mr. Kesselman: Exception.

Mr. Price: I except.

[fol. 208] Mr. Wackerman: I am objecting to it on behalf of my defendants, on the ground that it is not connected with these defendants. He is not sure which it is.

The Court: Objection overruled.

Mr. Wackerman: Exception. I object on the further ground, to its going into evidence, this statement on the top of it.

Mr. Brancato: Those statements are stricken out, except the date, the same as the original.

Mr. Wackerman: Not on this one.

The Court: Have them stricken out.

(Government Exhibits Nos. 9 and 11 for identification, received in evidence as Govt. Exs. Nos. 9 and 11.)

By Mr. Brancato:

Q. Now, Mr. Oyler, I show you Government Exhibit 9 in evidence and Government Exhibit 11 in evidence and ask you if you can tell, if you can remember, which one of those two exhibits or papers you had at the time that you got the money from Manning, when the arrest was made?

Mr. Price: I object to it as incompetent, irrelevant and immaterial.
The Court: Objection overruled.

Mr. Price: I except.

A. I won't try to say which one. Mr. Connolly had one and I had the other.

By Mr. Brancato:

Q. Are those two papers identically the same? Is one a carbon copy of the other?

[fol. 209] Mr. Price: I object, on the ground that the papers are the best evidence.

The Court: Objection sustained.

Mr. Brancato: All right. I will ask the jury to take those papers and examine them themselves. (Handing papers to jury.)

Mr. Price: I have no objection.

By Mr. Brancato:

Q. Now, did you compare the serial numbers on the money or bills which Manning gave you, with the numbers on the memorandum which you had?

A. We did, yes.

By the Court:

Q. No, you personally?

A. Mr. Connolly and I. I think Mr. Connolly checked them off; I called them out.

By Mr. Brancato:

Q. Did the numbers compare the same?

A. They did, yes, sir.

Mr. Brancato: I offer the money in evidence.

Mr. Price: I object to it upon the ground that it is incompetent, irrelevant and immaterial and not binding on the defendants.

Mr. Brancato: I offer it as Government Exhibit Number 10 for identification.

The Court: Received.

Mr. Price: I except.

(The money is marked in evidence Government Exhibit 10 for identification.)

By Mr. Brancato:

Q. I show you now, Government Exhibits 3, 4, 5, 6, 7, and 8 for [fol 210] identification, and ask you if there is any identification mark placed by you upon the packages found at the premises number 138, on the night of the arrest?

A. My initials should be on each of them. I have not seen them since the night of the 16th.

Q. Did you place a mark on them?

A. I think my initials are on each and every package.

Q. Will you examine them carefully and see if your initials are on them? (Witness examines packages.)

Mr. Brancato: May I have it noted that Exhibit 3, the packages are tied together and that they are being opened now in the presence of the Jury.

The Court: Let that appear.

A. Each and every one initialed "R. H. O."

By Mr. Brancato:

Q. Now, at the time that these packages were gathered, at Number 138, at the time of the arrest, which agent was it that took them and had them in his possession?

A. Agent Connolly.

Q. Is he an agent employed under you in your office?

A. He is, yes, sir.

Q. Who took them to the office?

A. Connolly.

Q. I show you Defendant's Exhibit A in evidence and ask you to look at those windows marked "A" and "B"; can you tell us now, officer, whether or not on the night of the arrest of these defendants, those windows were covered or stained; can you?

A. They were not.

Q. They were not stained?

A. No, sir.

Q. What kind of glass?

A. Plain glass.

Q. Transparent?

A. You could see through it, though; did see through it.

[fol. 211] Mr. Price: I move to strike out "did see through it."

The Court: Motion granted.

Mr. Brancato: I object to that, if the Court please.

The Court: He was not asked about that.

By Mr. Brancato:

Q. Did you see through it?

A. I did.

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial. He has testified what he saw or did not see.

The Court: Objection overruled.
Mr. Price: I except.

By Mr. Brancato:

Q. When did you see through them?

A. The night of the 16th, just before we made the arrest.

Q. Tell us just how you saw through; what you did?

A. I had walked up and back in front of the house a number of times, and went with Officer Manning when he stood at the window and we could see the defendants inside. I went around to the door, went in the door while Manning stayed at the window.

Q. There cannot be any question about that, Officer?

A. There can be—

Mr. Price: There can be and will be plenty of question about it. I submit the question is improper.

The Court: Yes. Objection sustained.

Mr. Brancato: If the Court please, there cannot be any question about that fact in his mind.

[fol. 212] The Court: Mr. Brancato, please proceed with the trial. The Court has ruled. You can ask the witness if he can be sure of a thing, but putting a question in the form to which an exception has been taken, cannot be permitted.

By Mr. Brancato:

Q. Is there any question in your mind but that is the fact, Mr. Oyler?

A. There is not.

Q. These defendants were taken out of the premises number 138, were they, later on?

A. They were, yes, sir.

Q. And placed under arrest?

A. They were.

Q. They were taken to the station house—they were taken over, I don't know where they were taken; I did not accompany them.

Q. Oh, you did not accompany them to the station house?

A. No, sir.

Mr. Brancato: That is all.

Cross-examination by Mr. Price:

Q. Mr. Oyler, what is Nunzio's last name?

A. Nunzio?

Q. Yes.

A. I cannot tell you. I can get you the record in the office, but I cannot tell you his last name.

Q. How long has he been employed under you?

A. He was employed for several months; not employed at the present time.

Q. Do you employ him or does the Government employ him?

A. Well, the Government employs him. You asked whether he was employed under me. He was employed under me. He was paid from Washington when he was paid.

Q. Who hired him?

A. I did.

[fol. 213] Q. You say that he was paid direct from Washington?

A. He was, yes.

Q. What months did he work for you?

A. I think he worked in December, in January; I don't know whether he done any work in February or not.

Q. What other months did he work for you?

A. That is all, I think.

Q. What was the first time that you ever placed your eyes on Mr. Nunzio, whose last name you don't know?

A. Well, I say his name is—I could tell his name if I had the records here—the same as I cannot tell some of your defendants on the stand here. I don't know, some time last year.

Q. That is quite indefinite, last year.

A. It is. It will be indefinite, because I cannot tell you positively.

Q. Give me your best recollection?

A. I know I had him at the office the last time in February—no, in December, in December of last year. Now, whether I had him before or not at the office, I won't say.

Q. Is that your best answer?

A. That is the best answer I can give you, yes, sir.

Q. Can you give me the month that you first saw Nunzio and spoke to him?

A. I cannot.

Q. How long before December, 1921, was it?

A. Well, I won't say, may be five or six—may be in the summer time.

Q. That is your nearest recollection, that you can remember?

A. Yes.

Q. Is that it?

A. Yes, sir; that is.

Q. Did you meet him at or about the same time that you met Pasquale Napolitano?

A. No, I have had Patsy for three years, tow and a half years, anyhow.

[fol. 214] Q. Do you employ him?

A. He is paid from Washington. I employ him whenever I want him.

Q. How does he get paid, by each case that he works on?

A. He gets so much a day when he is working. When I want him to work, he works.

Q. The same with Nunzio?

A. That is right.

Q. Do you make up a report which you submit to your superiors in Washington on the men that work under you in this way?

A. Do I do what?

(The last question was repeated by the reporter.)

A. I send in a form for them to get paid, to get paid on.

Q. What form do you send in?

A. Form 10.

Q. Any other form?

A. That is all, number 618 sometimes.

Q. You do not use number 63½, do you?

A. Not for them, no.

Q. That is the stool pigeon form, isn't it, number 63½?

A. That is the form I get paid on.

Q. Oh, is it?

A. Yes.

Q. I beg your pardon. What is the stool pigeon form?

Mr. Brancato: I object to the question.

A. Stool pigeon?

Mr. Brancato: Wait a moment. I object to the question. There is no evidence here of a stool pigeon form.

The Court: Objection overruled.

[fol. 215] By Mr. Price:

Q. What is the stool pigeon form?

A. I don't know what you are talking about. We have no stool pigeons. We have an informers' form.

Q. You never heard of the word—"Stool pigeon"?

A. Oh, yes.

Q. You don't know what it means?

A. I know a plenty what it means.

Q. Then you do know what I am talking about when I am talking about a stool pigeon?

A. But we have no stool pigeon form, which you asked about.

Q. Do you know what I am talking about when I ask you about a stool pigeon?

A. I do.

Q. You employ some of them, don't you?

A. You can call them stool pigeons, if you want to.

Q. 63½ is the personal form which you use to send into Washington, isn't it?

A. The personal form that we use?

Q. Yes. That you personally use to make your reports on?

A. We do not.

Q. As to the men that are working under you?

A. I do not.

Q. On the requisition for funds?

A. No.

Q. 618 is the so-called special informers' form that you have?

A. 618 or 10, either one used for informers. I have been paid under it myself.

Q. How many days prior to January 16th did this man Nunzio work?

A. May be twenty days; I won't say.

Q. Was it more than twenty days?

A. It might have been.

Q. How much do you pay him a day?

A. Pay him about a rate of five dollars.

Q. Do you pay Pasquale the same?

A. I do. Sometimes more.

[fol. 216] Q. His regular salary, is it five dollars a day?

A. Whom are you referring to?

Q. Pasquale?

A. No, it is not.

Q. What is his regular salary?

A. He is not working now.

Q. When he is working?

A. I might pay him five dollars a day; I might give him three, I might give him \$10.

Q. That is within your discretion?

A. Yes, sir.

Q. You pay him when he testifies in Court?

A. I do not; the District Attorney's office pays him.

Q. How much is he being paid now, while he is here in Court?

A. I think he is getting a dollar and a half under subpoena. Mr. Brancato can tell you.

Q. Is that the only sum that he gets?

A. That is, now.

Q. Don't you pay him in addition?

A. I do not.

Q. Well, where do you get in touch with Mr. Nunzio when you want to get hold of him?

A. When Mr. Pacetta is in town he gets a hold of him.

Q. Did I ask you anything about that?

A. You asked me how I got in touch with him.

Q. I asked you where you got in touch with Mr. Nunzio when you wanted to get hold of him?

A. When Mr. Pacetta is in town he gets a hold of him.

A. Right now I could not get in touch with him at all because I don't know where he is.

Mr. Price: I move to strike out the answer on the ground that it is not responsive.

The Court: When do you want to find out?

Mr. Price: I will withdraw the question.

By Mr. Price:

Q. Have you any address in your office or any place of residence of this man Nunzio?

A. I have not.

[fol. 217] Q. Do you know where he lives?

A. I do not.

Q. Who first brought him to your office?

A. I think Salvatore Pacetta, an agent of mine.

Q. When you want to get him, you get him through Mr. Pacetta?

A. I do.

Q. You wanted to get him yesterday, didn't you?

A. We got him.

Q. Please answer my question yes or no?

A. I say we got him yesterday.

Q. You wanted to get him?

A. I found him.

Q. You got him as soon as you wanted him?

A. Yes. I don't know where he lives though.

Q. You spoke to him yesterday, didn't you?

A. I did not.

Q. Pacetta spoke to him?

A. Pacetta did not.

Q. He was in your office yesterday, wasn't he?

A. He was not.

Q. Where did you see him yesterday?

A. I did not see him yesterday.

Q. Didn't you say that you got him yesterday?

A. We did. He was here this morning.

Q. You saw him this morning, then?

A. I did.

Q. Did you know when you saw him this morning that I had been asking questions about him to find out what his right name and address was?

A. Only what I had been told.

Q. Who told you about it?

A. Mr. Brancato asked whether we could get him and I said I thought we could.

Q. Is that all he asked you?

A. That is all he asked me.

Q. Did he tell you that I had been trying to find out who he was and where he could be located?

A. He asked me if I knew his last name. I could not give his last name until this morning.

Q. Did you give him a last name this morning?

A. I did not. Mr. Connolly did.

[fol. 218] Q. What name did Mr. Connolly give him this morning?

A. I cannot tell you. Mr. Connolly is outside; he can tell you.

Q. You were present, weren't you?

A. I was, but I cannot tell you his last name to save me.

Q. What is your best recollection of Nunzio's last name?

A. I won't try to tell you.

Q. Why not?

A. Because I cannot remember it.

Q. Did Mr. Nunzio give Mr. Connolly or Mr. Brancato in your residence his address?

A. He did not, no.

Q. Do you know whether he lives in New York or Brooklyn?

A. I cannot say.

Q. You are perfectly frank about it, aren't you?

A. I am.

Q. You are not concealing anything from me?

A. I am not; no need to.

Q. Now, you did not go to the premises 138 Union Street, did you, before the 16th?

A. No, sir.

Q. How many times before the 16th did you talk to Mr. Nunzio about this case?

A. I think I talked to him once or twice; may be twice.

Q. Did you talk to him on the 12th of January about it?

A. I might have, yes; I won't say positively now that I did. I talked to him two or three times about it.

Q. Did you talk to him again on the 13th day of January about it?

A. I won't say whether I did on the 13th.

Q. You won't deny that you did, will you?

A. No, sir; I will not.

Q. Did you talk to him again on the 13th about it?

A. I know that I did that day.

Q. That is, the 14th?

A. Yes, I am pretty positive; I am positive sure that I did that day.

[fol. 219] Q. The 14th of January?

A. Yes.

Q. I am referring to Nunzio?

A. That is right, yes. Nunzio is the name I know him under.

Q. I don't want to have any question raised later that I am misleading you. Did you talk to him after the 14th about the case?

A. On the 16th.

Q. You talked to him here today about the case?

A. I did not, no.

Q. After Court adjourned for recess at one o'clock did you talk to Mr. Manning about the case?

A. Talk to Mr. Manning about it?

Q. Yes.

A. Sure I talked to Mr. Manning about it.

Q. Now let us get down to these two pieces of paper which have been offered in evidence; you say these papers were prepared when, referring to Government's Exhibits 9 and 11?

A. Mr. Connolly prepared them.

Q. When?

A. The night of the 16th of January, at our office in New York.

Q. What time?

A. Well, now, as near as I can give you the time, we left the

office—I mean by “we,” Pacetta, Manning and several other agents, on a case uptown, and got back, I should say, around 6:30, may be a quarter to seven. McCormick and Connolly prepared the papers.

Q. Were you present?

A. I was not. I checked them over and marked them. We all signed them, and left along about seven o'clock, I think, or a little after seven.

Q. Was that the only time papers were prepared and checked off with the numbers of the money?

A. We prepared them—you mean for this case?

Q. Yes, for this case.

A. It is the only time that I know. They might have prepared them on another buy that they made on the case, yes.

[fol. 220] Q. On another buy that they made on the case?

A. Yes.

Q. You know as a matter of fact that they never made another buy in this case, don't you?

Mr. Brancato: One moment.

A. They got some samples over there.

Mr. Brancato: I object to this. He is asking him about this case. We did not ask about this particular case.

The Court: Objection overruled.

Mr. Price: Do not make any speeches.

Mr. Brancato: I am not making speeches, but you are putting those questions in his mouth.

The Court: Objection overruled.

(The last question was repeated by the reporter.)

A. I know they got samples.

By Mr. Price:

Q. They got two little samples; is that what you mean by a “buy”?

A. Sometimes that is a “buy,” yes.

Q. You know, as a matter of fact, that in this case it was not a buy, do you?

A. I was told afterwards it was not, yes, sir.

Q. You know it was not, too, don't you?

A. I know they gave samples.

Q. You are going to do the defendants a lot of good if you get an opportunity, are you?

A. I am trying to answer your questions, sir.

Q. What I am getting at, you gave Pasquale this money, didn't you?

A. I did, on the night of the 16th, yes, sir.

[fol. 221] Q. Did you give it to him on the night of the 14th?

A. I did not, no.

Q. So that if Mr. Pasquale testified that he got the money from you on the night of the 14th, you will say that he did not, won't you?

Mr. Brancato: One moment. I object to the question unless he specifies; what money does he mean by "this money"? Does he mean the money in evidence?

The Court: Yes, you should state that.

Mr. Brancato: This is a tricky part of the question.

Mr. Price: Oh, yes, I am full of tricks.

Mr. Brancato: You will be, and you are.

By Mr. Price:

Q. Do you understand what I am asking you about?

A. I understand that if I gave him any money on the 14th, that he lies about it. Well, I did give him money on the 14th; in fact, every week, to make cases with.

Q. How much money did you give to him on the 14th?

A. I don't know. I may have given him one hundred, two hundred, three hundred dollars. It might have been ten dollars.

Q. Was it more than three hundred dollars?

A. I don't know on the 14th. I told you I don't remember because we made a number of cases.

Q. Didn't you say just a minute ago that you did not give him any money on the 14th?

A. I did not give him that money on the 14th.

Q. Is this money, this Government Exhibit 10 any part of the money that you gave Pasquale on the 14th?

A. It might have been some of the same money, because it has to go back in the funds, put back, used again and re-marked.

[fol. 222] Q. By "re-marking" you mean taking the serial numbers?

A. Yes, sir.

Q. That is what you call "marked" money?

A. That is the only way—

Q. (Interrupting:) That is what you call "marked" money?

A. Yes.

Q. Don't you know when you mark money you put your name or some other sign on the money physically?

A. We don't mark it that way.

Q. Yes, but it is marked that way?

Mr. Brancato: I object to that, "It is marked that way."

A. It might cause suspicion.

By Mr. Price:

Q. It might cause suspicion?

A. Yes, it might. When we are buying narcotics, sometimes they look at the money very closely.

Q. What time did you leave your office to go to Brooklyn on the night of the 16th?

A. I should say we left the office around seven o'clock; may be a little afterwards.

Q. Did you go direct to the Brooklyn Bridge?

A. We did, yes. If I remember rightly, I think we got over to Union Street a little after eight, if I remember rightly.

Q. Did you all leave together?

A. We did.

Q. Got off the car at Court and Union Streets together?

A. We got off at—I won't say what street we got off. We walked down—I know it was Union Street because we did not turn off anywhere on Union Street.

Q. When you got off the car, did you then stay in a group or did you first walk right down the street without first having stopped and talked?

A. We scattered and walked on down the street.

[fol. 223] Q. By "we scattered" tell us what you did?

A. Napolitano, Patsy and Nunzio went ahead. I think I went with Manning and Connolly. I won't say whether that is right now or not. I won't state. Several of the other men went on the other side.

Q. What side did you go down the street on, the right hand side or the left hand side?

A. I think I went down on the right hand side. I won't say.

Q. What side did Patsy and Nunzio go down on?

A. If I remember right, they were ahead of me, about half a block.

Q. On the same side of the street?

A. Yes, sir.

Q. What side did the other men go down on?

A. I won't say.

Q. You mean you cannot say, is that it?

A. I cannot remember where the other men walked.

Q. Well, you were very much interested in this case at the time?

A. No more interested in this case than any other case we are going to make.

Q. Have you made some others?

A. A lot of them.

Q. You have testified on a number of cases? Answer that question. You have testified on a number of cases since that time?

A. A lot of them, yes, sir.

Q. Now, Pasquale and Nunzio were half a block ahead of you when they got to 138 Union Street, is that right?

A. Yes, sir; they were about half a block. I should say, yes, sir.

Q. You saw the men at 138 Union Street, did you?

A. I did, yes, sir.

Q. Then you walked down Union Street with your brother officer Manning, is that right?

A. I don't know whether I was with Manning then or not; whether I stopped in the hallway. We were all scattered around in that vicinity.

[fol. 224] Q. When you got to the neighborhood of 138 Union Street, where was Manning?

A. I think Manning stood on the corner of the next street above 138.

Q. Hicks Street?

A. I won't say, sir; whatever street is above.

Q. What do you mean by "above"? Do you mean toward Court Street?

A. Columbia Street is below, isn't it?

Q. Yes.

A. All right, what street is above?

Q. Hicks Street.

A. All right, Hicks Street.

Q. Then comes Henry, Cliton and Court Street.

A. I am not acquainted in Brooklyn.

Q. Was he standing at Hicks Street?

A. Yes, I think I did.

Q. Where did you go?

A. I think I walked by the house several times and then stood in the hallway across, directly across from 138.

Q. While you were in the hallway directly across from 138, Manning was up on the corner, was he?

A. I think he was. I won't try to tell you where Manning was then.

Q. While Manning was on the corner and you were in the hall across the street, four men came out of the house, is that right?

Mr. Brancato: I object to that question in that form, because the evidence is——

Mr. Price: No, Judge, I submit that he be not permitted to tell this witness what to say.

Mr. Brancato: If the Court please, I object as the evidence——

The Court: You are talking both at the same time. The point will shortly be reached when the Court will stop it. The Court warns [fol. 225] both counsel now that that will be the course the Court will follow. Mr. Brancato is about to make an objection to which counsel for the defendant objects on the ground that this witness may thereby receive some suggestion as to the answer.

The witness is excused from the witness stand and will withdraw from the Court Room. Please leave the Court Room.

(The witness leaves the Court Room.)

Mr. Brancato: My objection is this. I object to the form of the question on the ground that the question contains as a matter of fact something about which the witness has not stated is true, but only as a possibility or probability; he cannot say for sure. The question contains a negative pregnant.

The Court: Repeat the question.

(The question was repeated by the reporter.)

Mr. Brancato: Now, if the Court please, he has asked the witness before if Manning was at the corner. The witness says he was not

sure; he could not answer that. Now, his question, if true, makes a liar of the witness by his own question, not by his statement.

The Court: The question is now put to the witness, "Is that right?" If that is not right, the witness can say no. There is no possibility there of misrepresenting conditions to a witness who is careful and thoughtful in his reply to the question.

Mr. Brancato: But here is the fact, this man says he was in the hall; he is not sure about Manning being up on the corner. Your [fol. 226] Honor will see that the inference may be that Manning was up on the corner from his own statement.

(Question was repeated again by the reporter.)

The Court: There are three things, while Manning was on the corner, you were in the hall, four men came out of the house. If any one of those is not correct, the witness says no, because he is asked if that is right.

Mr. Brancato: Will your Honor instruct the witness to look out for that question.

The Court: Not at all. It is a question which he must look out for himself.

Send for the witness.

(Witness sent for and returns to the Court Room.)

Mr. Price: May I ask your Honor to tell Mr. Brancato that when he has an objection to make, not to make any suggestions or any remarks. I do not want the witness to hear what Mr. Brancato has to say.

Mr. Brancato: I make no suggestion at all. Counsel interrupted me in the middle of my objection.

(The question was again repeated by the reporter.)

The Court: Listen to the question.

A. The first time, no. The first time Alba came out alone, the old—the older defendant.

Mr. Price: I move to strike out the answer on the ground that it is not responsive.

The Court: Motion denied.

[fol. 227] Mr. Price: Everything after "No".

The Court: Motion denied.

Mr. Price: I except.

By Mr. Price:

Q. Did I ask you anything about Alba, or did I ask you about the four men, Centorino, Alba, Nunzio and Pasquale Napolitano?

A. They came out after. There was no four men in the house.

Q. Wasn't there?

A. At that time, no sir.

Q. You testified here to a conversation; you testified here on your direct examination, that while you were across the street, did you

not, Centorino came out, Alba came out, Pasquale came out and Nunzio came out and they stood in the center of Union Street?

A. That was afterwards, yes, sir. They did, afterwards.

Q. That is what I am asking you about; you testified at that time that you were in the hallway opposite 138 Union Street?

A. I was in the hallway quite a while; I should say maybe three quarters of an hour altogether.

Q. Now, did you testify at that time that they came out and you were in the hallway?

A. I was, yes, sir.

Q. What I am trying to get at, was Manning up at the corner of Hicks Street at that time? A. I won't say whether he was or not, because I was there quite a few minutes after; I should say twenty minutes after.

Q. Up to the time the four men came out, did you see Manning look into these windows, "A" or "B"?

A. I did. I looked in with him once when we had followed the defendant with the mustache, followed Alba, the older gentleman, down to 172, where he got that defendant with the mustache. I went into the hallway, Manning stayed outside and Moog was in the floor below.

[fol. 228] Mr. Price: I move to strike out all after "Yes."

The Court: Granted.

By Mr. Price:

Q. What window did you look in with Manning, the window "A" or the window "B"?

A. The window "B."

Q. That is the first time, before the defendants came out with Nunzio and with Pasquale Napolitano, right?

A. That is when all four of them were in the house together, yes, sir.

Q. That is before they came out of the house together, isn't it?

A. Before they came out together, yes, sir.

Q. You looked in through the window "B"?

A. Yes, I looked in through both windows; in both windows. You could see them in the kitchen, first in the kitchen, then we saw them in the dining room where the window "B" is.

Q. When you looked for the first time you saw them in the room "A," which is the kitchen, and when you looked in the second time, both you and Manning, you saw them in the room "B," is that it?

A. That is right, yes.

Q. No mistake about that, is there?

A. No mistake about it, no sir.

Q. Don't you know, Officer Oyler, that Alba went from the room "A" to the room "B" and struck a match to light the gas and as soon as the gas was lighted in the room "B" the shot was fired by Manning?

Mr. Brancato: I object to that question upon the ground that there is no evidence to sustain that question.

The Court: Objection overruled.

[fol. 229] A. I don't remember any light being lit at all.

By Mr. Price:

Q. Now, after the four men separated in the street they all got back into the house again, and all the defendants got into the house, you came from where you had been, didn't you?

A. I had been down at Number 167th Street, yes—167 Columbia Street, and followed them up to the house when they——

Q. (Interrupting.) Did all of the defendants come from 167 Columbia Street together?

A. Not all of them, no. The two brothers, Pace and the defendant with the mustache.

Q. Centorino?

A. Centorino.

Q. They all came together?

A. They did, yes.

Q. You are positive about that?

A. They were together. I should say there were two of them a little back of the others as they walked up the street, yes.

Q. Which two walked together?

A. I won't say which two walked together.

Q. How did they walk from this place on Columbia Street, do you know?

A. How did they walk from this place on Columbia Street?

Q. What streets they took?

A. All they have got to do is to come up Columbia to Union and up Union on the left hand.

Q. Don't you know as a matter of fact that Frank Agnello walked alone through Columbia Street to De Graw Street; up De Graw Street to Hicks Street; through Hicks Street to Union Street, and stood opposite 138 Union Street?

A. I know he did not.

Q. Don't you know that while he was standing opposite 138 Union Street, the defendant Pace, Thomas Agnello and Centorino [fol. 230] came up Union Street together?

A. I know they all came up Union Street together, and went in the house together and he was with them.

Q. Don't you know that while they were standing, Pace and Agnello and Centorino, in front of 138 Union Street that the defendant Centorino called Frank from across the street and said, "Come over" and they all went into the house together?

A. I know that they did not because I was following them; right behind them, the distance of this Court Room.

Mr. Brancato: How far is that?

Mr. Price: Can you measure it? You are over here a lot. I don't know. Let the Judge say.

Mr. Brancato: I am here a lot but I do not have a tape measure in my hand every day. What do you concede to be the distance?

Mr. Price: Sixty or seventy feet.

Mr. Brancato: Fifty-five feet.

By Mr. Price:

Q. Don't you know that the defendants were in 138 Union Street about a minute when the shot was fired and the door broken in?

A. I know they were there longer than that.

Q. Who searched the defendant Alba?

A. Manning.

Q. Were you present?

A. I was.

Q. Who else was present?

A. Connolly.

Q. Where was the money found on Alba?

A. The right hand trouser pocket, I think.

Q. The front pocket?

A. I think so, yes.

Q. Well, don't you know?

A. Pretty sure. Officer Manning took it.

Q. Who took it away from him?

A. He did.

[fol. 231] Q. You say it was the right trouser pocket, the pocket that I have my hand in now?

A. I am pretty sure that is right, yes.

Q. Don't you know, as a matter of fact, Mr. Oyler, that Alba was searched three times and nothing found on him, and the fourth time he was searched the money was brought forth?

A. I know he was not searched only once. He might have been searched several times after the money was found. He was only searched once before the money was found.

Q. Did you have Alba under your observation from the time that you broke in?

A. We had them all in one room; the room marked "B."

Q. Altogether, do you know how many times Alba was searched when you and Manning were in the side room talking with Thomas Agnello?

A. I think he had been searched before that; in fact I know that he had been searched before that.

Q. Wasn't it after that that Alba had the money taken away from him, after you had spoken to Thomas Agnello?

A. It was not, no.

Q. Who was the first man that was searched?

A. Pace.

Q. Who searched him?

A. McCormack.

Q. Who was the second man searched?

A. I don't know. I think Alba was searched right about that time. Two or three men searching; it did not take long.

Q. You were all searching, were you not?

A. Yes, sure; that is what we generally do.

Q. That is what you did in this case?

A. No different in this case than in any other.

Q. You did not see Thomas Agnello do anything up to the time that you had this conversation with him, other than you have testified to here?

A. I did not, only what I testified, where I had seen him, where [fol. 232] we had come from, what he had said, and so forth.

Q. You did not see Centorino do anything other than what you have told us?

A. I did not, no. I think I have told everything.

Q. When you asked Centorino what he knew about this, he denied knowing anything about it?

A. He said he knew nothing. He did not tell us anything.

Cross-examination by Mr. Kesselman:

Q. How many years have you been connected with this narcotic division?

A. Seven or eight years.

Q. Were you in the Government service prior to that time?

A. I was not, no.

Q. For seven years you have been continuously in one line of work?

A. About eight years.

Q. During that time you have testified in a great many cases?

A. Testified in a lot of them.

Q. In a great many cases?

A. A great many and a great many of them.

Q. You know what evidence is necessary in order to obtain information against a defendant?

A. Well, I generally get all I can.

Q. You know what is necessary, don't you?

A. Yes, I do.

Q. You know just what is necessary to make a case?

A. I try to.

Q. Yes, of course you try. All Government Officials do. Do you always try to get enough evidence which will make a case stand up?

A. I get all the evidence available.

Q. You always try to get enough evidence to make a case stand up?

A. I try—I try to get all that I can get.

[fol. 233] Q. Now, you found none of these packages on the defendant Thomas Agnello?

A. Thomas Agnello, no, sir.

Q. That is the oldest brother?

A. No, sir.

Q. You found none of the packages on the defendant Pace?

A. No packages on him.

Q. You found no money in their possession?

A. None of the money on them, no, sir.

Q. I did not get that answer.

A. No, sir, I said.

Q. Did you reduce any of these statements which you claim the various defendants made to you to writing?

A. I did not, no, sir.

Q. Did you make any effort to reduce any of those alleged statements to writing?

A. We did not. We did not have them in a place that we could.

Q. You did not make any effort to reduce any of those alleged statements to writing?

A. We did not.

Q. And of course that is not the reason why you are bringing in these so-called statements, because you have nothing in writing, is it?

A. What statement is that?

Q. The statement which you claim the defendants made?

A. I am telling you to the best of my knowledge what they stated to me that night.

Q. I ask you is that the reason you have not any written statements, or is the reason that you are testifying to oral confession because of the fact that you have not anything in writing from them?

A. Very seldom we have anything in writing, and I have not from these defendants.

Q. There are occasions when you get written statements?

A. Where we are so we can use a stenographer, we try to get a statement.

Q. You did not ask the defendants for any statement?

A. I did not. We did not have any place to take them.

[fol. 234] Q. You did not get any written statements, did you?

A. No, sir; I did not.

Q. Were you present when all these defendants were brought to the United States Attorney's office here?

A. I was not here, no, sir.

Q. Do you know who brought them here? I will withdraw the question. Did you go to the station house with them?

A. I did not, no, sir.

Q. Where did you leave the party that night?

A. At 138, I left the defendants.

Q. After they were all placed under arrest?

A. After they were sent to the station house, yes, sir.

Q. There was a pretense or ceremony gone through of arresting Nunzio?

A. Nunzio?

Q. Yes.

A. We did not arrest Nunzio, no.

Q. Was there a pretense or an alleged ceremony of placing him under arrest?

A. No.

Q. Are you sure of that?

A. Sure, not any more than Patsy.

Q. At no time that night?

A. Not any more than Patsy.

Q. I am asking you about Nunzio now?

A. I said at no time that night, no, sir.

Q. At no time did anybody say anything to Nunzio in substance that he was under arrest, charged with violating the Narcotic Law?

A. Somebody might, I did not.

Q. You were there all the time?

A. Yes, sir.

Q. You left when the defendants left also?

A. I did, yes, sir.

Q. When you are making your report or payroll for the men who are employed by you regularly, what form do you use?

A. They make their own up on the number 63½.

Q. On the 63?

A. 63½?

Q. Do you approve or O. K. that before it is sent to Washington?

A. I do, yes, sir.

[fol. 235] Q. When you make up the pay roll or expense account for what you call "Informers" do you make that up on a similar form?

A. No, we make that up on a Number 618, I think, or form 10, I don't know which we are making it up on now.

Q. That is what you call an informer's account?

A. That is one way we have.

Q. Nunzio was an informer?

A. He was.

Q. Likewise Patsy?

A. Yes.

Q. They were not employed regularly?

A. They were employed at that time.

Q. You would not call either one of them stool pigeons?

A. You can call them what you want.

Q. What would you call them?

A. I call them informers.

Q. You want to treat them nicely?

A. I treat them just the way I feel.

Q. I understood you to say in response to a question of Mr. Price that you did not know Nunzio's last name?

A. I do not. I cannot tell you now his last name, sir.

Q. Have you ever used them in any cases other than this one, as far as you know?

A. I don't know whether we used him before here.

Q. Did you ever use him over in Manhattan, Mr. Oyler, I am not restricting or limiting you to Brooklyn; did you ever use him in any cases in Manhattan?

A. I don't know. I think we have. I would not say because we use a lot of different boys.

Q. Are they required to sign this so-called 618 or number 10 form which was made out?

A. Yes, they have to sign it.

Q. Are they the only two Italian men whom you have on your

staff that is, Patsy and this Nunzio, or rather, did you have them [fol. 236] in December and January?

A. What do you mean, are they the only two, or are they the only two I had at that time?

Q. Are they the only two Italian men there in your department in December, 1921, and January of this year?

A. I have different men; I might have three or four more.

Q. Did you use them during the month of December, both of them?

A. Used Patsy practically all the time. I won't say about Nunzio,

Q. How many other cases did you have Nunzio work on with Patsy?

A. I don't know. In fact, I cannot tell you right now how many cases Patsy worked on, without the records.

Q. But they did work on other cases?

A. I think may be they did.

Q. Does Nunzio talk English?

A. Very good.

Q. Very good?

A. Yes, sir.

Q. After you followed the defendants from the address on Columbia Street, I understood the you were behind them a distance which was stipulated to be about fifty-five feet?

A. That far, may be sometimes a little further; I should judge about that far.

Q. And you came right to 138 Union Street and entered the hallway?

A. You mean, "they" came?

Q. Yes, they came along and I assume that you went right back of them?

A. I waited until they got inside.

Q. And you followed them in perhaps thirty seconds later?

A. No, we were two or three or four minutes before we went in.

Q. Do you remember that you have testified in your direct examination that you were so close behind them that you heard the door shut when you entered the hallway?

A. I did.

[fol. 237] Q. Did it take three minutes for them to walk in ahead of you?

A. No, but I waited before we went in.

Q. I beg pardon?

A. I waited before we went in until Officer Manning gave us the "office," as we call it.

Q. That is, when the shot was fired?

A. No, the shot was not fired until we were going through.

Q. Where were you when the shot was fired?

A. Just coming into the door of the living room.

Q. That is the door that leads from the public hallway into the first room of the outer apartment?

A. No, I was further than that; I was through, going into the "B"—room "B," because I did not know—

Q. Room "A" you designate as the first room which you enter from the public hallway?

A. That was "A."

Q. Then you went into the second room which is "B"?

A. Yes, sir.

Q. As you entered "B" room, was that the time the shot was fired?

A. I was going through the door, midway between the hall door from—in the room "A" and the door leading into "B."

Q. Did you lead your men in?

A. I happened to be the first one.

Q. That was without any idea of who was leader, you were the first one that gained entrance to the apartment?

A. Yes, I was the first one.

Q. Do you know who was directly behind you?

A. Yes, I think Moog and McCormick, because I knew I could run there when I wanted to because some shot was fired—

Q. The only shot that was fired was that by Manning?

A. I afterwards found out; I did not know who was shooting.

[fol. 238] Q. You know that Manning fired a shot?

A. I did, a few minutes after the episode.

Q. You did not know it at that time?

A. No. In fact if I could have got out I would have got out.

Q. So when you got into the room "B," all the defendants were there and Nunzio and Patsy?

A. Nunzio and Patsy and all the defendants. Patsy was standing right at the door, if I remember right, and I do remember that he was standing at the door of room "B."

Q. Where was Nunzio at that time?

A. I did not see Nunzio at that time. He must have been back alongside the side. I did not see him at that time, sir.

Q. Did you see any of the packages there in evidence on the table?

A. Three packages on the table, to right of the door as I went in.

Q. That is, leading towards the window?

A. Yes, sir.

Q. Towards the window leading to the street?

A. Yes, sir.

Q. You found another package in a bedroom?

A. In a bedroom to the back and the left of it.

Q. Of "B" or "A"?

A. Off of "B."

Q. The other packages you found where?

A. In the pockets of the young Agnello boy.

Q. That is Frank Agnello?

A. Of the young Agnello boy.

Q. You repeated the conversation which you had with each of them; I say you have repeated the conversation which you had with each of them?

A. As near as I can recall, yes, sir.

Q. Now, your memory is pretty good, isn't it? Generally pretty good, isn't it?

A. Yes, sir.

Q. You remember the details of what happened two months ago pretty well?

[fol. 239] A. I remember it as it comes along; I might have left out something, but I think I have practically covered it.

Q. You tried to incorporate, to include everything in the line of conversations which took place there?

A. I did; I tried to.

Mr. Kesselman: That is all.

By Mr. Brancato:

Q. You were asked before whether you try to get all the evidence you can in making a case, or words to that effect. Now, just what did you mean——

Mr. Kesselman: Oh, I object to what he means now, on the ground that it is incompetent, immaterial and irrelevant. The question is improper in form, as to what this witness means.

The Court: I don't think it makes any difference. Objection sustained.

By Mr. Brancato:

Q. When you said that you tried to get all the evidence that you can, did you mean to say that you create evidence?

Mr. Kesselman: I object to it upon the ground that it is leading and upon the further ground that the question is improper in form.

The Court: Objection overruled.

Mr. Kesselman: Exception.

(The last question was repeated by the reporter.)

A. I don't create evidence; no need to on a narcotic case. There is always enough.

Mr. Price: I move to strike out the answer.

[fol. 240] The Court: Motion granted. Everything after the words "I don't" is stricken out.

Mr. Brancato: That is all.

By Mr. Price:

Q. Mr. Oyler, the windows on this defendant's Exhibit A, which I desire to show you, you see the bottom of the windows are marked "A" and no mark on the top window; is that correct; "A" and "B" respectively, you see what I mean?

A. You mean the window?

Q. Yes, the bottoms are marked "A" and "B"?

A. Yes, sir.

Q. The section that has "A" on and the section that has "B" on is half of a window, is that correct?

A. Yes, sir.

Q. That raises up, doesn't it; is that correct? That is, the window is divided into halves?

A. Divided, so it can be raised up.

Q. Now, how far from the street level is the center of the window, or the upper part of the lower half of both of those windows?

A. I should judge it would be over your head; I won't say, may be six feet.

Q. May be eight feet?

A. Yes, I don't know. I could not tell you how high.

Q. Now Pasquale Napolitano testified on direct examination that when he came out of the house with Nunzio and with the two defendants Centorino and Alba that they walked up on the sidewalk about ten feet and stood about a pace out from the house line and talked in that position; you testified that they walked over into the center of the street and stood there; which is the fact?

A. They walked off the sidewalk is the fact; that is absolutely what they done.

[fol. 241] Mr. Brancato: I object; it is argumentative; it is argumentative; it is argument of counsel.

By Mr. Price:

Q. You know that your representatives had been over there on Saturday night to 100 Union Street; don't you?

A. I did, yes.

Q. They got nothing at that time?

A. I know they got two samples.

Q. But they did not purchase anything at that time?

A. They were given nothing, so they informed me.

Q. You saw these blue packages on the table?

A. Yes, sir.

Q. You have seen a great many of them at different times?

A. I have.

Q. You have had a great many of them in your possession in your office on a number of occasions, haven't you?

A. I have had a lot of them.

Q. Nothing new about seeing packages like these, is there, to you?

A. Oh, there might be a little difference, but practically the same; all of them that are smuggled in.

Mr. Price: I move to strike out the answer.

Mr. Brancato: I object. It is responsive to his question. He is bringing out this himself.

The Court: Motion granted. Strike it out.

By Mr. Brancato:

Q. How many of these packages have you seen in your office?

A. You mean these?

Q. Similar to those?

A. Oh, we get them right along, hundreds of them.

Q. Those packages are obtained when arrests are made?

[fol. 242] Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Brancato:

Q. Are those packages that you have seen in your office the same size and color as these I now exhibit?

A. We have some, I presume.

Q. The same color?

A. Some of them, yes; blue.

Mr. Brancato: That is all.

Mr. Price: That is all.

HAROLD B. GAMMELL, called as a witness on behalf of the United States, and having been first duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. Doctor, what is your profession?

A. Chemist in the Bureau of Internal Revenue Department.

Q. Employed by the United States Government?

A. Yes, sir.

Q. How long have you been employed by the United States Government as a chemist?

A. About late in 1917.

Q. Since that time, 1917, have you made analyses of narcotics for the United States Government?

A. I have.

Q. For the purpose of testifying in Court?

A. Yes, sir.

Q. You have testified in Court before in narcotic cases?

A. Yes, sir.

Q. I show you Exhibit 7 for identification and ask you if you have seen that exhibit before today?

A. I have.

[fol. 243] Q. When did you see it the first time?

A. On the 24th day of January, 1922.

Q. Who gave it to you?

A. Agent Ray Connolly.

Q. He is attached to the narcotic squad, isn't he?

A. He is.

Q. At the time that he gave it to you will you please describe its condition as to the outside packing?

A. It was in—this package here was in a large envelope, a large brown envelope. He gave—he did not give it to me directly; he gave it to Dr. Edson, the Chief Chemist in our building, in my presence, however.

Q. What did the doctor do?

A. Well, it was taken, looked at, taken in and given over to the clerk for entry in the books; afterwards placed in the safe. A few days later it was analyzed.

Q. You say it was placed in the safe, that is a safe in your office?

A. Yes, sir.

Q. Did you see it in the safe??

A. Well, I took it out of the safe.

Q. What was the condition of the envelope at the time that you took it out of the safe?

A. The same as it was when I put it in there.

Mr. Price: I move to strike out the answer on the ground that it is a conclusion.

The Court: Motion granted.

By the Court:

Q. Was the envelope open?

A. The envelope had been opened, yes, sir.

By Mr. Brancato:

Q. Was the envelope opened in your presence?

A. Yes, sir.

[fol. 244] Q. And was it opened when the envelope was given to the doctor in your presence by Connolly?

A. It was opened at the same time, yes, sir.

Q. When Connolly gave it to the doctor, was it opened or sealed?

A. I don't remember exactly. I know we opened it up to look at this package because—

M. Price: Never mind the "because."

A. We opened it to look at it.

By Mr. Brancato:

Q. To look at the package?

A. Yes, sir.

Q. What was the condition of that package?

A. That package came in and this whole thing was all—this package was not broken; the seal was not broken.

Q. Who broke the seal?

A. I did.

Q. Did you analyze the contents of the package?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial. It is not shown to be in the same condition as it was when it was originally taken away from the possession of the defendants in this case, if it was ever in their possession.

The Court: Objection overruled.

Mr. Price: I except.

Mr. Price: On the further ground that there is no connection shown between the defendants and this package.

The Court: Objection overruled.

The Price: I except.

(The last question was repeated by the reporter.)

A. I did.

[fol. 245] By the Court:

Q. Did you see this package put into the safe?

A. I did.

Q. What was done after it was put into the safe, as far as the safe itself was concerned?

A. The safe was locked, your Honor.

Q. In your presence?

A. Yes, sir.

Q. How many people had access to the safe?

A. Two or three.

Q. Who are they?

A. Dr. Edson and Moody, the clerk; a colored clerk we have.

Q. And yourself?

A. Yes, sir, myself.

Q. From the time that it was put in the safe, as you have described, up to the time that you took it out for analysis later, did you open the safe yourself?

A. No, I did not open it myself.

By Mr. Brancato:

Q. What did you find?

The Court: It seems to me if there are other people that had access to that safe, they should be here to testify to its condition.

Mr. Brancato: On that proposition may I argue the point with the Court?

The Court: Yes.

Mr. Brancato: I submit where the packages, or in fact any exhibit of narcotics or liquor, where it is placed by an official in a safe, which safe is in the office of that particular official and only one or two men—officials have access to that particular safe, that we should not be required to bring every clerk in the office or every employee in the office.

The Court: No, there are only two involved here. I am going to take this testimony, but I shall take under very serious advisement [fol. 246] a motion to strike it from the record and it will destroy the Government's case completely if I came to the conclusion that the two men who had access to the safe should be produced. Bear that in mind.

Mr. Brancata: I will do something else, if the Court please. I will have him analyze these packages right here in Court.

The Court: All right, so much the better, but you won't obviate the difficulty because if they had been tampered with before he took

them out of the safe, there is much more opportunity of tampering with them later on.

The Court will receive this testimony subject to a motion to strike out, if the Court is satisfied that the other two Government employees who had access to the safe should be produced.

By Mr. Brancato:

Q. Who are these two other Government employees in your office who have access to that safe?

A. Robert A. Edson, Chemist in charge.

Q. Who else?

A. Gilbert H. Moody, a clerk.

Q. Where are those two employees now?

A. Dr. Edson is in Boston on a narcotic case.

Q. Where is the clerk?

A. He is in the office, room 544 Old Post Office Building.

Q. Will you describe that safe please, in the office?

A. It is a large safe, about six feet high, I should say, six and a half feet from the ground; about four feet wide; two large doors and the combination part of the safe on the right hand door. Both doors open. The left hand side has two big spaces for putting things in like a big ledger, a box and like that, the right hand side has another little compartment. On the top it has—supposed to be [fol. 247] a lock. The lock is not on that. Then the bottom part is similar to the other side, but it is not so high up.

Q. What do you keep in these compartments of the safe?

A. Keep our narcotic samples and the platinum and standard compounds that we have.

Q. You made an analysis of Exhibit 7, did you?

A. I did.

Q. Tell us what you found?

A. Cocaine hydro-chloride.

Q. How much of it was there, if you know?

A. I did not weigh it, no, sir.

Q. Can you tell us approximately how much cocaine there is there?

A. It was marked 100 grams. It feels like one hundred grams.

Q. Cocaine?

A. Yes, sir.

Q. What is cocaine a derivative of?

A. Coca leaves.

Mr. Brancato: I offer Government's Exhibit 7 in evidence.

Mr. Kesselman: I object to it upon the ground that it is incompetent, irrelevant and immaterial; no proper foundation having been laid, and call your Honor's attention at this time to the fact that there is no connection here to show that this exhibit is in the same condition now as when it was taken possession of by the Government Officers, when this man examined them,

The Court: Objection overruled.

Mr. Kesselman: Exception.

Mr. Price: The same objection for the defendant Centorino.

The Court: Objection overruled.

Mr. Price: I except.

[fol. 248] Mr. Wackerman: I will now object to it on the further ground that it is not admissible, it is not competent because it is not charged in the indictment—these men are not charged with the crime of conspiring or with the crime of selling cocaine. They are charged with selling heroin.

The Court: What about that?

Mr. Brancato: Cocaine, which is a derivative of coca leaves.

The Court: Objection overruled, with leave to each of the defendants to move to strike it from the record.

Mr. Wackerman: I submit, if your Honor reads this indictment, it charges with selling large quantities of heroin, both in the conspiracy and the selling.

Mr. Brancato: Read number three.

Mr. Wackerman: Read it out loud.

Mr. Brancato: You read it yourself.

Mr. Wackerman: May I read it?

The Court: I think I will have to read it, much as I would like to hear both of you gentlemen. The charge covers both heroin and cocaine; that is perfectly clear, I think.

Mr. Brancato: The second count.

The Court: The selling charge accuses all of the defendants with selling a large quantity of heroin, a derivative of opium and cocaine, a derivative of coca leaves. Objection overruled absolutely on the last ground stated by Mr. Wackerman.

Mr. Wackerman: Exception.

Sample marked "Exhibit No. 7."

[fol. 249] By Mr. Brancato:

Q. I show you Government Exhibits 4, 5, 6, and 8 for identification—

Mr. Price: Your Honor admitted a paper in evidence which has typewritten statements of facts which should not be before the jury. I do not know whether you saw it, Judge, or not.

Mr. Brancato: We concede that these statements can be taken out.

The Court: Just take them out.

Mr. Brancato: It will be shown that they were taken out here.

The Court: They have no business before the Court and Jury.

Mr. Brancato: They are only there for the purpose of identifying the packages by the witnesses.

Mr. Price: Leave them in this form and the jury does not have to see them.

By Mr. Brancato:

Q. Will you take any one of those exhibits, marked for identification that I have just offered, 4, 5, 6 and 8 and make an analysis of the contents of those packages?

A. Could I?

Q. Yes, will you do so, please, any one of them.

Mr. Kesselman: I object to it on the ground that it is incompetent, irrelevant and immaterial and on the further ground that there is nothing here to prove that the exhibit which Mr. Brancato now seeks to have the witness analyze is in the same condition as it was on the 16th of January.

[fol. 250] The Court: You mean to have him analyze it?

Mr. Brancato: Yes, sir.

The Court: What is to be gained by that, if the point the Court has in mind has anything to it. He cannot give us any better analyses, so far as the substance not having been tampered with than he could some weeks ago.

Mr. Brancato: There is this to be gained by it. Your Honor remembers that the evidence shows that there were some packages found on the table?

The Court: Yes, but they were all in the safe.

Mr. Brancato: Not all of these packages were.

The Court: Where were they?

Mr. Brancato: Not in his safe, not all of these packages were not. These that were marked for identification have been in the possession of the narcotic agents.

The Court: Then I will give you an opportunity to get this doctor down from Boston if the defense makes a point on that and we will have the doctor here from Boston to testify as to whether or not he touched this package in the safe. We can try other cases, you know.

Mr. Brancato: All right.

The Court: We won't have any analysis of that. We will get the other proof here and will suspend the trial until we get the doctor down.

Mr. Brancato: There is another point. I still want to have an [fol. 251] analysis made for this reason; four of these packages, three or four, the evidence shows were on the table, while the rest were found in the possession of one, in the pockets of one of the defendants.

The Court: Which is the one that he says he analyzed, that was in the safe. Where was that one found?

Mr. Brancato: I don't know, except it was one of the ten.

Mr. Price: One of the eight.

Mr. Brancato: One of the eight or whatever they are there; eight or ten; I don't know which.

The Court: I do not think the time of the trial should be taken by analyzing drugs.

Mr. Brancato: It does not take long.

The Court: Do you expect to do it now?

Mr. Brancato: Yes.

The Court: The Court advises you that never again will it be permitted unless there is some very extraordinary circumstance. The Court believes that it is fundamentally wrong to take up the time of the trial with a quantitative or qualitative analysis and the Court will not allow it in the future.

In this case you may have the analysis made, but it won't be permitted again. Please advise your office in general because this notice will be considered as notice to all the Assistant United States Attorneys.

Mr. Brancato: That does not apply to us. We cannot do anything until the evidence is brought in. It should apply to the agents who have charge of making the arrests.

The Court: Not at all. The United States Attorney arises and [fol. 252] says that the action is ready, thereby representing that he has seen the evidence and finds it is prepared for presentation. If the agents have not prepared themselves to testify, it is the business of the Government's legal representatives to ascertain that before the trial of the case.

Mr. Brancato: Right.

The Court: Do you want this doctor to get down and analyze the sample?

Mr. Brancato: No, I will waive that now, but I want this done; I want to show that we are willing to offer now; in fact do offer now, to the chemist one package of the exhibits that he may take it to his office tomorrow and analyze them.

The Court: All right.

Mr. Brancato: And have it so marked that the package which he now receives has been before the Court during this trial.

The Court: Very well.

Mr. Wackerman: Of course, on behalf of my defendants, I am objecting to that on the ground that it does not cure the defect at all.

Mr. Brancato: There is no defect that I can see.

Mr. Wackerman: There is no connection between these.

Mr. Brancato: There is no defect that I can see.

The Court: Which one do you want the doctor to take?

Mr. Brancato: Take one package which has been tied, containing a bundle of five packages, one of those.

The Court: One of those?

[fol. 253] Mr. Brancato: May I have the Clerk mark that one with his official name and title on it?

The Court: Yes. Now, Dr. Gammell, take this home and analyze it and be very careful that no hand touches it except yours, and return it to the Court tomorrow in the same condition except for that part of it that you analyzed, as it is now when you take it from the Court Room.

The Witness: Yes, sir.

Mr. Kesselman: May I say to your Honor that as far as I am concerned that I am going to object to the chemist coming in and reporting his analysis tomorrow, unless he proves that the package now is in the same condition as it was on the 16th of January.

Mr. Brancato: Connolly is outside. I will bring him on. I am not asleep here. Connolly is outside and he will testify to that. Do not worry about that.

The Court: Is that all you want of Dr. Gammell now?

Mr. Brancato: I now give to the Chemist, Government Exhibit 5 for identification, that he may make an analysis of it.

The Court: How many are you giving him?

Mr. Brancato: Two. That is all.

Mr. Price: No questions.

The Court: Will you gentlemen suspend your cross examination until tomorrow when this witness has given his full testimony?

Mr. Price: Yes, sir.

Mr. Kesselman: Yes, sir.

Mr. Wackerman: Yes, sir.

The Witness: Will I have the other man—wire the other man from Boston? He is on subpoena up there.

[fol. 254] The Court: You had better write up to him to-night so that he can get a letter in the morning and have him wire to this Court Room to-morrow morning when he can be back.

The Witness: I will do that.

The Court: Call the next witness.

Mr. Wackerman: If the Court please, before Mr. Brancato calls the next witness, I would like to make a motion in reference to this cocaine introduced in evidence, so that there won't be any misunderstanding.

The Court: It is not introduced in evidence.

Mr. Wackerman: He introduced this in evidence over my objection, this exhibit, Exhibit 7.

The Court: I thought you meant the two packages. What is your objection?

Mr. Wackerman: I want to object to them on the ground that under the indictment in this case the Government cannot offer any evidence of any cocaine under the conspiracy charge; all that they can offer in evidence under the indictment is a large quantity of heroin, which is a derivative of opium and cocaine.

Mr. Brancato: Oh, if the Court please——

The Court: Motion denied.

Mr. Wackerman: Exception.

The Court: We will sit until six o'clock.

[fol. 255] RAY CONNOLLY, called as a witness on behalf of the United States, and having been first duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. What is your business?

A. Federal Narcotic Agent.

Q. Working under Chief Oyler, are you?

A. I am.

Q. Ralph Oyler?

A. I am.

Q. How long have you been a narcotic agent?

A. Since July 17, 1921.

Q. Now, do you remember the 16th of January, going to Union Street over in Brooklyn?

A. I do.

Q. Were there other agents with you at the time?

A. There were.

Q. How did you come over to Brooklyn?

A. Well, we went there after having visited that vicinity on the Saturday night previous.

Q. No, I do not care about that. How did you come to go there on January 16th; how did you get to Union Street?

A. Why, we went—took a trolley car over the Brooklyn Bridge.

Q. And you got off where?

A. Well, I believe it was Union Street. I do not know the streets over there. I got off with all the officers. We had a couple of men with—

Q. How many did you have together at Union Street, how many agents were there?

A. Mr. Oyler, Mr. Manning, Mr. Pacetta, Mr. Mellon, Mr. McCormick, Mr. Moog. There was Salvatore or Patsy Napolitano and there was another man; I forget his first name, an Italian.

Q. Nunzio, is it?

A. I think that was his name.

Q. How many were there altogether of you?

A. About nine.

[fol. 256] Q. Now, where did you come from?

A. Before, from the Post Office Building.

Q. Your office?

A. Yes, sir.

Q. The Post Office Building?

A. Yes, sir; that is, the Post Office over in New York.

Q. About what time was it that you left there; approximately?

A. About half-past seven, seven or eight o'clock.

Q. I show you Government Exhibits 9 and 11 in evidence and ask you if you signed your name to those exhibits?

A. I did.

Q. At the time that you signed your name, these marks were not on there, were they?

A. No, sir; it was typewritten.

Q. Who wrote, typewrote, the numbers on these two memoranda?

A. I did.

Q. At your office?

A. Yes, sir.

Q. At the time that you typewrote those numbers, did you have anything before you?

A. I had Agent McCormick calling off the numbers of the bills that were before him.

Q. The numbers of the bills—you mean the money?

A. Money.

Q. After these memoranda were prepared, who received this money?

A. Patsy Napolitano.

Q. You started off for Brooklyn, is that right?

A. Yes, sir.

Q. When you got over in Brooklyn, you say that you got off at Union Street?

A. I believe that was the street; I don't know the street.

Q. It was the same street where the arrests were finally made?

A. Yes, and I walked straight down as we got off and it was on the same block.

Q. How many blocks did you walk straight down after you got off the car?

A. I should judge about two or three blocks, as near as I can recall.

Q. Are you a Brooklynite?

A. No, sir.

[fol. 257] Q. Did you go into the premises Number 138 Union Street?

A. I did.

Q. Did you go in there at any time before the arrest was made?

A. No, sir.

Q. What did you do from the time that you got near 138 Union Street until the arrests were made?

A. When we first arrived in the same block that this house was situated, I walked up and down the street maybe four or five times looking for a place where I could secrete myself. That was my instructions. I finally found a hallway diagonally opposite this house. I went there and remained there.

Q. How long did you remain in that hall prior to the time that you first got in there?

A. I might say about twenty minutes, twenty-five minutes.

Q. Were you in that hall twenty to twenty-five minutes steadily?

A. Well, no, I came out. That is where I came out and walked along. I then went back again. I did not—when I did not see any one I came out and walked in front of the house and then went in again.

Q. Did you at any time see Napolitano or Nunzio from the time that you got into this hall until the arrests were made?

A. No, sir; I did not.

Q. Did you see any of the defendants before the arrests were made?

A. No, sir.

Q. The first time that you saw them was when the arrests were made?

A. Yes, in the house.

Q. Tell us what happened when you got in the house with the rest of the agents?

A. Why, when we went into the house after the doors were forced open, the agent in charge directed me to remain in the hallway. I stood right in the hallway leading to the kitchen.

Q. Who was the agent in charge?

A. Mr. Oyler. I stood in the doorway leading from the kitchen [fol. 258] to the hall with my revolver in one hand and a flashlight in another, with the light flashed on the rear of the hall for the purpose of seeing that no one came——

Mr. Kesselman: I move to strike out the last part of the answer.

Mr. Brancato: That is consented to.

The Court: Strike it out.

By Mr. Brancato:

Q. Then did you go inside at any time?

A. Well, there was a scuffling around inside. I stayed until after it had quieted down, maybe five or six minutes. Then after that Mr. Oyler directed me to come in. I came in and stood at the kitchen door. As I came in, Napolitano——

Q. That is the kitchen door?

A. That is the kitchen door.

Q. Do you mean the kitchen door, the door leading from the main hall into the kitchen?

A. Yes, sir.

Q. Did you go inside into the next room; that is, the room which is next to the kitchen?

A. Well, I should say, maybe about five minutes after that Mr. Oyler called me in. Then I went into the next room. I stood between him and Mr. Manning while they were searching the prisoners.

Q. Was Manning searching anybody?

A. Yes, sir; he was searching the stout man when I went in.

Q. Which one of these five men was he searching?

A. The last man there in the corner.

Q. The elderly man?

A. Yes, sir.

Q. Stand up, Mr. Alba.

A. That is the man.

Q. Did he find anything on him, if you saw him?

A. Yes, I saw him.

[fol. 259] Q. What did he find?

A. He took out a roll of bills.

Q. What did he do with the roll of bills?

A. Manning took the bills. This man started to yell that was his money. It was "My money," "My money." He started to push me and Manning out towards the kitchen. Finally I got him into the second room and told him to be quiet.

Q. At the time that the money was given—Manning had the money—were these exhibits, two papers there, and any comparison made of the numbers on the bills?

A. Not that I recollect, not at that time.

Q. When was the comparison made?

A. The comparison was made the following day at the office.

Q. After you got through you say that Manning got the money from the defendant Alba; will you tell us now what took place?

A. Well, after—at that time, after the money was found Mr. Oyler handed me three packages and said, "Here——"

Mr. Price: Oh, no, I object to what Mr. Oyler said.
The Court: Objection sustained.

By Mr. Brancato:

Q. Were any of the defendants present when Mr. Oyler said anything to you?

A. They were all in the one room.

Q. Which room was that?

A. The second room.

Q. I show you Defendant's Exhibit A, the photograph and ask you which of those two windows represents the kitchen?

A. "A."

Q. Which represents the room adjacent to the kitchen?

A. "B."

[fol. 260] Q. Now, where was it that Mr. Oyler handed you the packages?

A. In room "B."

Q. At that time were the defendants present, the five defendants?

A. All of them.

Q. All of them were present?

A. Yes.

Q. Did you see where Mr. Oyler got those packages from?

A. I did.

Q. Where?

A. From the table, a barroom table; one of those tables that you see in a barroom, in the back room of a saloon.

By Mr. Price:

Q. That you used to see?

A. Yes, see them yet.

By Mr. Brancato:

Q. What did you do with those packages?

A. These three packages I put in my outside overcoat pocket.

Q. Did you get any other packages while the defendants were present in that room?

A. Yes, sir. At the time Mr. Oyler handed me those packages one of the agents, Mr. Mellon, said that he had——

Mr. Kesselman: Now, I object to what Mr. Mellon said to this witness.

The Court: Objection sustained.

Mr. Brancato: In the presence of the defendants.

By Mr. Brancato:

Q. What did he do?

A. He handed another package to Mr. Oyler.

Q. What did you do with that package?

A. That package I put in my other pocket.

Q. Did you receive any other packages?

A. I did.

[fol. 261] Q. How many more?

A. Six more.

Q. What did you do with those packages?

A. Those packages I put in my inside coat pocket, that is, this coat here, under the overcoat.

Q. Did any of the agents identify those packages by writing their names or initials on them?

A. They did.

Q. What did you do with the packages after you got them from the agents, as you have described?

A. Why, I kept them right in my pockets the way that I placed them that night and took them home with me that night and the next morning I brought them down to the office and compared them——

Q. Don't say "compared them"; just say what you did.

A. I brought them back to the office the next morning and tied the packages that were taken from one of the defendants by Agent Oyler——

Mr. Price: I move to strike that out; he does not know anything about it.

Mr. Brancato: I don't know about that.

The Witness: I saw him take them from him.

Mr. Price: That is the first time that you said so.

Mr. Brancato: He has said it now. Others said it before him.

A. (Continuing:) I identified those packages so as to read that they were taken from the person——

Mr. Price: I object to that and ask that it be stricken out.

The Court: Strike it out.

[fol. 262] By Mr. Brancato:

Q. Did you tie those packages together?

A. I did.

Q. Sir?

A. No, I put six of them together.

Q. Tied a string around them?

A. Yes, sir; and then sealed them.

Q. What did you do with the other four packages?

A. Marked them for identification.

Q. What did you do?

A. Took one of the packages of the three that agent Oyler found on the table and delivered that to the chemist.

Q. Four packages or six packages you tied with a string and the three packages which agent Oyler got from the table, you took one of those and brought it to the chemist, is that right?

A. Yes, sir.

Q. Now, then, what did you do with the remaining package after you had tied them and sealed them as you have described?

A. I put the remaining nine packages in one envelope and identified the name of the case. Sealed it with my shield in red sealing wax, filed it away in our safe. The other envelope I sealed with my shield and brought it to the chemist.

Q. I show you a large envelope and ask you if you know what it is and where it comes from?

A. This is the envelope.

Mr. Wackerman: I object to him characterizing it. He just asked him if he recognizes it.

The Court: Yes, strike it out.

A. I do.

By Mr. Brancato:

Q. What is it?

[fol. 263] Mr. Wackerman: I object on the ground that it is incompetent, irrelevant and immaterial.

The Court: He has asked what this paper is?

Mr. Brancato: No, what is it used for. Has he seen it or used—

By the Court:

Q. When did you first see that?

A. I first saw this envelope the day I placed two small samples in it and delivered it to the chemist.

By Mr. Brancato:

Q. I show you a seal on the back of the envelope and ask you if you know who placed that seal there?

A. I did.

Q. When you placed the seal on that envelope, did you place anything inside the envelope?

A. I had previously put a small envelope in there with two small pieces of paper with samples.

Q. I show you Government Exhibits 1 and 2 for identification and ask you if those are the two samples that you placed in that large envelope?

A. They are.

Q. I show you an envelope, a white envelope, and ask you if that is the envelope in which those two samples were placed when you put them all into the large envelope?

A. Yes, sir; that is the envelope.

Q. I show you this large envelope and ask you if you have seen it before and when and where?

A. I saw this envelope the day I put one blue package in it and delivered it to the chemist after sealing it.

Q. One black package?

A. Yes.

[fol. 264] Q. Now, that one blue package which you placed in that envelope, where did you get it from?

A. That was one of the three packages which Mr. Oyler handed me in 138 Union Street.

Mr. Price: Will you please talk so that we can hear you?

A. I say that was one of the blue packages which Mr. Oyler handed me down in Union Street, No. 138, on the evening of January 16th.

By Mr. Brancato:

Q. Was that one of the three packages or one of the six packages?

A. One of the three that was taken from the table.

Q. Now, when did you put that package in that envelope?

A. (Witness looks at envelope.) On January 24, 1922.

Q. After putting it in the envelope on January 24th, did you seal it?

A. I did.

Q. Is the sealing wax on the back of the envelope exactly the same?

A. Not the wax that is there now, I did not place that there.

Q. Not that wax?

A. No, but there was wax placed there.

Q. Was there a seal on it?

A. Yes, my shield.

Q. Your shield seal?

A. Yes, sir.

Q. It was sealed, was it?

A. Yes, sir.

Q. Inside you say that there was one of those three packages?

A. There was.

Q. You testified before that you placed, that you took all of the packages to your office the following morning after the arrest?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. What did you do with all those packages on the morning after the arrest?

A. On the morning after the arrest, I put them into a temporary envelope, put them up in a vault over in the office.

[fol. 265] Q. Was the envelope sealed?

A. Yes, it was sealed with the mucilage on the back of it; it was not sealed with the wax seal.

Q. No wax seal?

A. I did not put that on until I delivered it to the chemist.

Q. Did you make any notation of the envelope, any identification?

A. I wrote all the names of all the defendants on the envelope.

Q. From the time that you got or received those packages at Number 138 Union Street on January 16th, to the next morning, January 17th, were they in your possession all the time?

A. Absolutely.

Q. Where?

A. I took them from down there, I took them home with me and left them right in my coat and hung my coat up until the next morning when I put my coat on and came down to the office.

Q. From the time when you got them, January 16th, until the next morning, January 17th, was there any change in those packages, as far as you know?

A. No, sir; not to my knowledge.

Q. On January 17th, when you brought those packages to the New York office, were they in the same condition as they were the night before when you received them at 138 Union Street?

Mr. Wackerman: That is objected to. He is not competent to testify as to that.

The Court: Objection overruled.

Mr. Wackerman: Exception.

Mr. Price: I object to it on the ground that it calls for a conclusion.

The Court: Objection overruled.

Mr. Price: I except.

A. As far as I know, to all appearances they were the same.

[fol. 266] By Mr. Brancato:

Q. You did not make any change, did you?

A. No, sir.

Q. How long after was it, after you got to your office, that you placed all those packages in the large envelope as you have stated before, they were placed in the vault?

A. Well, I should say it may have been three or four hours afterwards. I had to identify them; I had to have all the officers put their initials on them, and then I had to do some typewriting of some slips, put that on them—I should say maybe four hours.

Q. During those three or four hours, were those packages on your desk or table or wherever they were?

A. On my desk.

Q. Did anybody, as far as you know, tamper with those packages?

Mr. Wackerman: That is objected to on the ground that it is incompetent.

The Court: Objection overruled.

Mr. Wackerman: Exception.

A. I don't believe so. Somebody may have went over and touched but they were not moved from the desk because I was sitting there all the time.

By Mr. Brancato:

Q. After four hours, you prepared this envelope?

A. Yes, sir.

Q. This large envelope?

A. Yes, sir.

Q. Did you yourself take those packages and place them in the large envelope?

A. I did. I then put them in the safe.

Q. At the time that you put those envelopes, those packages into [fol. 267] the large envelope and placed them in the safe or vault, can you tell us now whether they were, to the best of your knowledge, in the same condition as you got them the night before when these men were arrested?

Mr. Price: I submit that that is improper and calls for a conclusion. He can describe them. I don't think he has a right to say—

The Court: Objection overruled.

Mr. Price: I except.

A. As to every one, they were not touched; they were sealed when we got them; they were sealed when I put them away. They had a piece of white paper with brown printed matter on it, a mark or something like that printed on it. That seal was not broken.

By Mr. Brancato:

Q. When did you again see that envelope which you placed in the vault?

A. Well, it may have been the following day when I drew up a letter of transmittal to the Commissioner of Internal Revenue, but it is customary—we generally put narcotics in the safe and when we get four or five cases together we prepare these letters of transmittal at the same time so we can deliver all the samples to the chemist at the same time. It saves running around. Now, it may have been the next day or a couple of days afterwards. Possibly it might have been January 24th; probably may have had ten cases at the time that I prepared.

Q. The same day, January 24th?

A. I could not tell unless I saw the letter of transmittal.

Q. Did you bring those packages which are marked for identification here in Court when this case began?

A. I brought them over to the Grand Jury Room and I brought [fol. 268] them back. Last Monday I brought them all over. The case was adjourned. I brought them back again. Yesterday, Monday, I had to go to a conference and I believe Mr. Manning—I gave them to Mr. Manning and he brought them over here.

Q. That was yesterday?

A. Yes, sir, Monday.

Q. Let me get this right; you say that you brought them to the Grand Jury?

A. I did.

Q. You brought them here last Monday when the case was on the calendar?

A. I did.

Q. You gave them to Mr. Manning to bring here because you were some place else?

A. Yes, sir.

Q. Now, when you brought them to the Grand Jury, where did you get them from?

A. Why, I got those from the temporary envelope which I had sealed temporarily.

Q. Is that in the vault?

A. I got them from the vault.

Q. Then after we got through in the Grand Jury, did you take them back?

A. I did.

Q. Where did you put them?

A. Put them back in the vault.

Q. When you brought them over on last Monday, where did you get them from?

A. From the vault; that is, not the chemist's envelope, my envelope.

Q. I am speaking about the seven or——

A. Nine packages.

Q. And when you gave them to Mr. Manning yesterday, where did you get them from?

A. From the vault right in the suit case.

Q. Who has charge of that vault?

A. I have.

Q. Has that vault a combination or a key, which?

A. No, it has one of these safety Yale locks.

Q. A Yale lock?

A. I don't know whether it is a Yale lock or what kind; it is one of those spring locks that you open with a key.

[fol. 269] Q. And have you a key for it?

A. Yes, sir.

Q. How many keys are made for that particular vault or lock, if you know?

A. Two keys.

Q. Who has those keys?

A. I have both of them.

Q. Did you at any time give those keys up to anybody since January 17, 1922?

A. No, sir.

Q. Have you had charge of those keys and vaults since that time, all during that time?

A. I am responsible for everything in the vault.

Q. Will you describe the vault, please? What is it made out of?

A. I believe mahogany, heavy mahogany wood. It is part of the fixtures of the building; it is set right in the wall.

Q. It is set into the building wall?

A. Yes, sir; it is built in.

Q. How big is the door that leads into that vault?

A. About the height of this door here. (Indicating door.)

Q. What is kept in that vault?

A. All narcotics to be used as evidence in pending cases.

Q. Is there any other department besides your department which has access to that vault?

A. No, sir.

Mr. Brancato: Your witness.

I am giving the chemist those two packages.

The Court: Very well.

Cross-examination by Mr. Price:

Q. Do you know this man Nunzio?

A. I know him if I see him.

Q. Did you ever see him before he was in this case with you?

A. No, sir.

Q. Did you see him on Saturday when you went there?

A. I did.

Q. Who went there on Saturday?

A. There was Manning, Agent Manning, Agent Mellon, Agent Pacetta, myself, Patsy Napolitano—

[fol. 270] Q. Have you finished?

A. I am a little off the question. And that other fellow, Nunzio.

Q. Anybody else?

A. Not that I can remember.

Q. Where did you stand Saturday night, with reference to 138 Union Street?

A. I was on the corner away from the house.

Q. Then you did not get near the house at all on Saturday night, did you?

A. No, sir.

Q. On Monday night where did you stand with reference to the house, 138 Union Street?

A. Well, as I say, I walked up and down several times and went in this hallway that was diagonally across the street from Number 138.

Q. Were you in the same hallway that Mr. Oyler was in?

A. He came in the hallway; he passed and came in the hallway. He was in the hallway some few minutes.

Q. Then did he go out?

A. He went out again, yes, sir.

Q. Then you don't know where he went after that?

A. I don't know where he went after that. I stayed in the hall.

Q. From where you were in the hallway, diagonally opposite, you kept looking out of the door toward 138 Union Street, didn't you?

A. Not continually, I did not.

Q. Well, that is what you were there for, to observe 138 Union Street, weren't you?

A. Yes, I was there to observe as much as I could, but not to show myself, not to stay outside. I walked out every few minutes and looked. If I saw any one I would go back.

Q. Did you close the door behind you when you went back into the hallway?

A. No, it was a double door; one half of the door was bolted.

Q. The other half was open?

A. The other half was open.

[fol. 271] Q. You stood at the open doorway looking across?

A. No, I stood behind the door that was closed, peering out as much as I could.

Q. Now, the first time that you saw any of the defendants you testified on your direct examination was when you got into Number 138 Union Street?

A. That is correct.

Q. And at that time, pursuant to orders, you stood in the doorway leading from the hallway into the kitchen?

A. Right.

Q. Now, when you got into 138 Union Street, did you see Pasquale?

A. I did.

Q. And did you see Nunzio?

A. At first I did not see him. I saw him later on, about——

Q. Where was Pasquale when you got in there?

A. He was in the—I believe he was in the kitchen when I got in there or he was coming out of that second room toward the kitchen. I know he stayed at the door with me.

Q. That is, he stayed in the kitchen with you, is that right?

A. After we got inside the house, yes, sir.

Q. That is, Pasquale?

A. Yes, sir.

Q. There is no doubt in your mind about that?

A. No doubt, absolutely no doubt.

Q. He did not go into the other room where the table was at all after you got in, did he?

A. Well, with the exception of about six minutes after I had taken up my position at the kitchen door when I went into the kitchen, I don't know where he went because I went in with Mr. Oyler and Manning, into the next room.

Q. Didn't you just tell me he stayed in the kitchen all the time with you?

A. While I was there, yes.

Q. Isn't it a fact that all the men were brought out from the [fol. 272] other room and into the kitchen and lined up against the wall?

A. All of the prisoners?

Q. Yes.

A. Not that I recollect.

Q. Did anybody tell Mr. Nunzio that he was under arrest?

A. I don't remember that.

Q. Don't you know that they lined Nunzio up against the wall and made believe that he was a prisoner too?

A. He may have been. I was at one end of the line-up. There was some others——

Q. You know that happened, don't you, Mr. Connolly?

A. Yes, I know what happened between——

Q. You say that you know that did happen?

A. What happened?

Q. That Nunzio was lined up with the other prisoners and a pretense made that he was under arrest?

A. I did not see him in the line-up. All I saw was, we were right in the doorway from the kitchen to the second room, I was looking in the bed room. The men on this side I did not see at all.

Q. Could you see through the door leading from the hall into the kitchen, through that door, through the next door into the room where the table was?

A. I do not remember being in the position that I had to look that way.

Q. I did not ask you that. I said did you see into the other room?

A. I don't know; I never looked.

Q. The room leading from the kitchen has been designated "A"?

A. Yes.

Q. The room with the table in it was designated "B"?

A. Yes.

Q. Now, do you state as a fact that you could stand in the doorway leading from the hall into room "A" and see through the door leading from room "A" into "B"?

A. I was standing at the door——

[fol. 273] Q. I did not ask you that; won't you please answer the question?

(The last question was repeated by the reporter.)

A. I do not believe that you could. I don't know. I was never looking that way.

Q. On Saturday, did you see Pasquale get any money?

A. Yes, we gave him——

Q. Who gave him the money?

A. As near as I can remember, I think it was Mr. Oyler or Mr. Manning gave it to him.

Q. How much was he given?

A. He was given a sum of money. I had nothing to do with that.

Q. Didn't you write it off on the typewriter on Saturday?

A. No, sir; I did not write it off on the typewriter on Saturday.

Q. Didn't you compare it with him on Saturday, take the numbers?

A. No, sir.

Q. Wasn't that done in your presence on Saturday?

A. It was done Monday night.

Q. I did not ask you anything about Monday night. I am asking you about Saturday.

Mr. Brancato: I object to the question.

By Mr. Price:

Q. Wasn't that done in your presence on Saturday?

Mr. Brancato: I object to the question on two grounds, first he has answered, he said "No," second there is no evidence that it was on Saturday.

The Court: Objection overruled.

A. I don't remember seeing any money being marked Saturday.

[fol. 274] By Mr. Price:

Q. You know that Pasquale went over there with you on Saturday and that he had a roll of bills, \$350, in his possession?

A. He may have had it.

Q. You know that he did?

A. I don't know whether he did or not.

Q. You know that you went over there for the purpose of making arrests on Saturday?

A. We went over there—my instructions, as I understood them, was—

Q. I did not ask you that; I said, don't you know that you went over there with Pasquale Saturday to make an arrest, yes or no?

A. Yes.

Q. You know that Pasquale went over there with money at that time?

A. I believe he had money.

By the Court:

Q. You did not see it?

A. No.

By Mr. Price:

Q. You know at that time that you had no case against anybody, don't you?

A. Not at that time.

Q. You know that he came away without having a case against anybody, don't you?

A. He came away with samples.

Q. Do you call that a case against anybody?

A. It is not a case.

Q. So that when he came away Saturday he came away with this money that he had in his possession, didn't he?

A. He may have.

Q. Don't you know that he did?

A. I don't know whether he had the money or not.

[fol. 275] Q. Have you testified to everything that you know about this case?

A. I have, as far as I have been asked.

Q. Do you know of anything other than you have been asked about the case?

A. Not that I can recall at this time.

Q. So you have exhausted your entire memory about the case?

A. It might be refreshed. Right now I don't know what I could say.

Mr. Price: That is all.

The Court: Any further cross examination?

Mr. Kesselman: No.

Mr. Wackerman: No.

The Court: Any re-direct?

Mr. Brancato: No.

The Court: Call the next witness.

WILLIAM J. McCORMICK, called as a witness on behalf of the United States, being duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. You are a Narcotic Agent attached to Ralph Oyler's squad?

A. I am.

Q. Have you—how long have you been a Narcotic Agent?

A. The past two years.

Q. You know these defendants, do you?

A. I do.

Q. Did you see them on January 16th?

A. I did.

Q. Did you see any of them before that date?

A. I did not.

Q. Were you present when the arrest was made?

A. I was.

[fol. 276] Q. That was at 138 Union Street, was it?

A. Yes, sir.

Q. Will you please tell us what happened, what you saw from the time that you got to 138 or in that vicinity, Union Street, just what you saw, where you were, what you could see, what you heard?

A. We arrived at, or I arrived at, in the vicinity of 138 Union Street around—Oh, I should say eight o'clock on the evening of January 16th.

Mr. Price: Please talk louder.

The Court: Talk a little louder, please.

A. (Continuing:) I arrived in the vicinity of 138 Union Street on Saturday evening, in the neighborhood of eight o'clock. I was in company with Agents Oyler, Manning, Pacetta, Connolly, Mellon, Moog. I at one time—I was in the company of Agent Connolly. I walked—before I come to that I followed Napolitano and another man, Nunzio, and saw them enter 138 Union Street. After they entered I proceeded to walk up and down the other side of the street. I then—I stepped into a hallway almost opposite 138. I was in there some time. I saw Napolitano and the other man come out in company with the defendant Alba and the defendant—I don't know his name, the first defendant. (Indicating.)

Q. Which one do you mean?

A. Centorino, the man with the mustache.

Q. Centorino, all right.

A. (Continuing:) They walked to the middle of the gutter and they held a conversation and Alba and Napolitano went back into the house and Centorino walked down Union Street towards Columbia Street and the other man also walked down towards Columbia Street on the other side of the street. A few minutes later the other [fol. 277] man came back and entered the house at Number 138 at that time, or before he entered, the defendant Alba and Napolitano went back into the house. Then the other man walked to the corner—I don't know where he went; he went in the direction of Columbia Street. A few minutes later he came back and also went into the house. Some time after that the defendant Pace and the two brothers and Centorino—

By the Court:

Q. Whom do you mean by the two brothers?

A. I cannot—

By Mr. Brancato:

Q. Are they here in Court?

A. Yes, sir.

Q. Which ones are they?

A. The last two on this side of the table. (Indicating with a wave of the hand.)

The Court: The witness indicates the defendants Agnello.

A. The Agnello brothers, the four of them came back together and they entered the house at Number 138.

By Mr. Brancato:

Q. Then what happened?

A. I then met Agent Oyler. I was still in the doorway when I saw them enter the house. I saw Agent Oyler coming down the side of the street. I approached him.

Q. Coming down from where?

A. He was coming from the direction of Hicks Street. I don't know what direction he came from. I saw him on the other side of the street.

Q. How far from 138 did you see him?

A. About two houses away. Then we went up to the house and [fol. 268] Agents Oyler, Moog, Connolly and myself and Pacetta, we broke in the front door, the second door to the door leading into the house.

Q. Then what happened after that?

A. When we broke in the last door, there was a shot fired and we found the defendants in the second room. The first room we entered was the kitchen; the room in back of that, I don't know what kind of a room that was—they were all in there.

Q. Yes?

A. We ordered all of them to hold up their hands and proceeded to search them.

Q. Did you search anybody?

A. I searched the defendant Pace.

Mr. Price: Wait a minute. I object to anything that he found on found on the defendant Pace, other than the subject matter of this charge here.

The Court: Objection sustained. Do not tell us anything about anything found on Pace except any powder.

Mr. Brancato: I have not asked him the question.

The Court: We are just anticipating some remark by Mr. McCormick.

By the Court:

Q. Tell us what the search of Pace revealed, limiting it only to powder?

A. I found no powder on Pace.

Q. What happened; tell us what was found on anybody that you saw?

A. I saw one of the agents, I don't know—I don't remember which one it was, take some packages from the inside pocket of the younger Agnello.

Q. Frank Agnello, is it, the one in the back?

A. The one in the rear, yes, sir.

[fol. 279] Q. Yes. A. And then Agent Pacetta had his hand broken and I was instructed to take him to the hospital. I immediately left with Pacetta and took him to the Long Island Hospital to have his hand treated.

Q. Were there any packages on the table? A. I don't remember.

Q. Were there any packages on the floor? A. I don't remember. The only packages I really am sure of seeing were the packages taken from the inside coat of the younger Agnello.

Q. Then you say that you went out with Agnet Pacetta to the hospital? A. Yes, sir.

Mr. Brancato: That is all.

Cross-examination by Mr. Price:

Q. Where was Pasquale when you got into the place? A. He was in the room with the five defendants.

Q. That is, in the second room, not the kitchen; is that it? A. I think it was the second room, yes.

Q. Don't you know he was in the kitchen when you got in there? A. I don't know.

Q. Which is the kitchen on this picture, "A" or "B"? A. I don't know what that picture is.

Q. Can't you tell from this photograph, Defendant's Exhibit A, which room is the kitchen and which is the room with the table in it? A. The kitchen was the first room we entered, and the other room was in the rear of it.

Q. Do you think that is an answer to my question? A. Yes, sir.

Q. I will give you my question again and see if you can answer it. Can you tell from this photograph which room is the kitchen, "A" or "B"? A. I cannot.

[fol. 280] Mr. Price: All right. That is all.

Mr. Brancato: If the Court please——

The Court: Is there any further cross examination?

Mr. Kesselman: Yes.

Cross-examination by Mr. Kesselman:

Q. You have testified breaking down some doors; how many did you break down? A. I believe it was three.

Q. Where was the first door located which you broke down? A. It was the outside door.

Q. It is the door which is shown on this photograph, Defendant's Exhibit A? A. This does not appear to be the same as the house that night I was there.

Q. Is there any doubt in your mind as to whether or not that is 138 Union Street? A. I don't know whether it is or not; I would not say it was.

Q. Was there a door at No. 138 Union Street, where you entered that night? A. There was.

Q. Does not that correctly represent the door at No. 138 Union Street, as it existed on the 16th of January? A. I don't know.

Q. Will you say that was not the door that was there on the 16th of January? A. I will not.

Q. What is there about the door which leads you to say that it does not represent the same house? A. I say I am not sure; I do not say it does not represent it.

Q. You make mistakes frequently, don't you? A. I am not infallible, no.

Q. Have you made mistakes in other cases? A. Oh, I suppose I have.

Q. Do you remember a narcotic case in which not testified——

[fol. 281] Mr. Brancato: One moment, please, there should be no such inference as that.

The Court: Objection overruled. Let the question proceed.

By Mr. Kesselman:

Q. Do you remember testifying last September or October in a narcotic case in this Court? A. I testified about several of them.

Q. Well, the one in which the question came up as to where certain money had been marked? A. That comes up in all cases.

Q. Well, do you remember it came up in one specific case as to where money had been marked, whether in the New York Office or whether in Police Headquarters? A. That comes up in all cases.

Mr. Brancato: I object to the question as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

By Mr. Kesselman:

Q. You remember that there was some considerable talk as to where certain money had been marked, in the New York office, in the Post Office Building in Manhattan, or at Police Headquarters, don't you remember that question? A. Yes, sir.

Q. Do you want me to give the name of the case in which it came up? A. Yes, sir.

Q. Do you remember the Wood case? A. No, sir.

Q. It did not happen in that case? A. I don't remember any Wood case.

Q. You will be in Court tomorrow morning, will you? A. I presume so.

[fol. 282] Q. I will give you the exact case then.

The Court: If the witness McCormick can give it, why waste time.

Mr. Kesselman: He knows the case as well as I do.

The Court: Tell us about the case.

The Witness: The Curdy case?

By Mr. Kesselman:

Q. Do you remember in the Curdy case you and another officer testified that on one day the money had been marked in one certain place; is that correct?

A. I remember I testified to the fact that the money was marked in Police Headquarters.

Q. The following day you came to Court and testified it had been marked in some other place?

A. I was asked to come and explain.

Q. Explain about what?

A. Where the money was marked.

Q. Did your explanation include the fact that it had not been marked at the place where you first testified it had been?

A. It did.

Mr. Kesselman: That is all.

Mr. Brancato: And that explanation you gave because you thought that you had made an honest mistake?

The Witness: Yes, sir.

By Mr. Brancato:

Q. And in justice to the defendants, you corrected your error?

A. I did.

By Mr. Kesselman:

Q. That is, you mean, Mr. Brancato had a talk with you and he told you that you lied and said to come to Court the next day and [fol. 283] tell what happened; did he?

Mr. Brancato: I did not say that.

A. No, sir.

The Court: He said "No."

By Mr. Kesselman:

Q. Did Mr. Brancato have a talk with you from the time that you testified up to the time when you came to Court the following day and changed your testimony?

A. He did.

Mr. Kesselman: That is all.

Mr. Brancato: One moment.

Mr. Kesselman: There is not any inference about you at all.

By Mr. Brancato:

Q. Did I call your attention to the fact that you had made some error, some mistake, in your previous testimony?

A. Yes, sir.

Q. Did I advise you to come into Court and like a man admit your mistake?

A. Yes, sir.

Q. You did it like a man?

A. I did.

Mr. Brancato: That is all.

The Court: That is all, Mr. McCormick.

Mr. Price: I do not feel very well and it is now after five and I would like to stop. Your Honor mentioned that we would continue to six—

The Court: That was intended by the Court to indicate that counsel must refrain from colloquy among themselves and the indulgence in witticisms, which are very amusing, but take up a great deal of [fol. 284] time. The Court warns both sides, whether or not you feel physically like holding late sessions or not, we are going to hold late sessions, unless you stop this continual colloquy back and forth. It is amusing but it takes up time, that should not be spent that way. We have had altogether too much of it. We are not entirely through with the Government's case. It was expected that a day and a half would be enough to finish it. Some of the jurymen were inquiring how long the case would take. No one knows.

Mr. Price: I will do my share to speed it up.

The Court: We will resume tomorrow morning at ten o'clock.

(At this point an adjournment was taken until tomorrow morning, March 15, 1922, at 10 o'clock A. M.)

Brooklyn, New York, March 15, 1922—10 o'clock a. m.

Before Hon. Garvin, J., and a jury

Appearances: (Same as heretofore.)

RAY CONNOLLY, recalled.

The Court: Have you heard from the chemist this morning?
Mr. Brancato: Not yet.

Direct examination by Mr. Brancato:

Q. Can you tell us—do you know where Agent Pacetta is now?

A. Yes, he is now in Florida, as near as I know, bound for Cuba.

[fol. 285] Q. When did he go?

A. He left a week ago Saturday.

Q. At whose direction did he go there?

A. The Chief of the Narcotic Division in Washington, Col. Nutt.

Q. He is there now on Government business, is he?

A. I have received some letters from him that I have here, if you want them.

Q. Do you know when he is expected back?

A. Not for six or eight weeks.

By Mr. Price:

Q. Where did he go?

A. He went to Washington, and from there to Florida and I understand from there to Cuba.

Q. When?

A. About a week ago; two weeks ago.

Cross-examination by Mr. Kesselman:

Q. When did you first know that this case was likely to be reached for trial?

A. A week ago Monday.

Q. You knew a few days prior then that this case was set for trial for Monday a week ago, which was March 6th?

A. No, I did not.

Q. Who first told you that the case was likely to be reached for trial on the 6th of March?

A. I believe it was Mr. Oyler; I am not sure.

Q. What day was it that he told you?

A. I think it was Saturday afternoon.

Q. Is that the same day that Mr. Pacetta left town?

A. I believe it is. I am not sure. I would have to look over the record.

Q. You testified that it was Saturday a week ago that he left here?

A. Yes, I can get his orders.

[fol. 286] Q. That was the same day that Mr. Oyler told you that this case would be reached for trial, last Monday?

A. I don't know whether he told me Saturday or Monday. I don't remember that. Either Saturday or Munday.

By Mr. Brancato:

Q. You say that he got instructions from Col. Nutt in Washington?

A. I have his orders over in the New York office.

Q. Will you kindly bring those orders here some time today?

A. I will.

Mr. Brancato: That is all.

JAMES WALTER MOOG, called as a witness on behalf of the United States, and having been first duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. You are a narcotic agent, are you?

A. I am, sir.

Q. Attached to Ralph Oyler's staff?

A. I am.

Q. On January 16th of this year did you visit the premises 138 Union Street, Brooklyn?

A. I did.

Q. And were you there with the rest of the agents who testified here?

A. I was.

Q. Did you see any of these five defendants that night?

A. I saw the whole five.

Q. Where?

A. I saw him; later on the evening I saw the five in No. 138 Union Street.

Q. Will you just tell us what you did from the time that you got to 138 Union Street or in the vicinity of 138 Union Street until you entered the premises and made the arrests with the rest of the officers; tell us that as briefly as you can?

[fol. 287] A. That was when Patsy and Nunzio went to the premises 138 Union, I saw the old defendant, Alba, that is the stout man, come out of 138 Union, turn left to the corner of Columbia Street and then turn right and went to the far side of Columbia Street to the premises No. 172. I followed then with Agent Ralph Oyler, the Chief. He entered the premises No. 172 Columbia Street; Ralph Oyler and myself entered the premises. Ralph Oyler followed him right upstairs. I went to the rear of the hallway. Five minutes later the defendant Alba came down with the defendant Centorino; that is the defendant with the mustache. The two then went across the street to a grocery store, No. 167 Columbia Street. Centorino came out in about a minute, joining Alba. The defendants then walked to 138 Union Street. They went in and stayed about ten minutes and then came out with Patsy and Nunzio and went to the center

of the sidewalk and had a conversation for about two minutes; two or three minutes. Centorino then left; the other three entered the premises at 138 Union Street and Centorino——

Q. When you say "the other three," whom do you mean?

A. Alba, Patsy and Nunzio. Centorino went to 167 Columbia Street again; that is the grocery store, and he entered there and stayed about ten minutes and then came out with the Agnello brothers.

Mr. Price: I move to strike out the characterization "with."

The Court: Yes.

By Mr. Brancato:

Q. He came out, did he, and other people came out about the same time?

A. The same time three other unknown men at that time.

[fol. 288] Q. Do you see them in court now?

A. I do.

Q. Who are they?

A. The Agnello brothers, and Pace, the defendant there with the glasses. Then during that time four all told; the four of them walked to 138 Union Street and entered.

Q. Which way did they walk from No. 167 Columbia—that is the grocery store—until they got to 138 Union Street?

A. They came out of 167 and turned left on Columbia Street toward Union Street and went right down Columbia Street to Union Street; then turned left on Union and then went to the far side of Union Street.

Q. They walked on two streets, on Columbia Street until they got to Union and then up Union until they got to the house?

A. Yes, sir; that is just it. They entered. In about five minutes Agent Manning walked to the window of 138 Union Street facing Columbia Street.

Q. I show you this photograph marked Defendant's Exhibit A and ask you if that shows the house 138 Union Street?

A. It looks like the house but the window is different. The window of "A" is different.

Q. In what way and in what manner is it different?

A. There are two stained glasses on this window "A." That was not there that night.

Q. There was no stained glass there that night?

A. There was not.

By Mr. Price:

Q. What is that?

A. I said that there is not; there was no stained glass on January 16, 1922.

By Mr. Brancato:

Q. Did you look—did you have occasion to look through those windows on that night?

A. I looked and saw a stout woman sitting on the chair by the table. I saw that from the street.

[fol. 289] Q. Did you see her through this glass which is now stained in the photograph?

A. I did.

Q. Then what did you do after the defendants got back to 138 Union Street and entered?

A. Well, Agent Manning got to the window and looked in; looked in about a minute, and he said, "All right, go in."

Mr. Kesselman: I move to strike that out, what Agent Manning said.

The Court: Motion granted.

A. (continued). Agent Manning looked in a few minutes, and Agent Oyler, myself and the rest of the agents went in. We entered the premises.

By Mr. Brancato:

Q. Did you break in any doors?

A. We did.

Mr. Price: I submit from now on that he be permitted to testify without leading.

Mr. Brancato: He has done that right along. I have not asked but a few questions.

By Mr. Brancato:

Q. After you broke in the door or doors of those premises, what did you do; what did you all do?

A. We went in. We first entered the room "B" and then—I should say "A," and then went into the room "B." The five defendants were standing there; also Patsy and Nunzio, and there was two blue packages on the table. That is all I could see. After we entered Agent Oyler told me to stay out at the door leading to the hall; about—

Mr. Price: I move to strike that out.

The Court: Motion granted.

A. (Continuing:) I stood at the door until the defendants were ready to be taken away.

[fol. 290] By Mr. Brancato:

Q. You went in with Oyler and the other agents through room "A" into room "B"?

A. I did.

Q. At that time you said that you saw some packages on the table?

A. I did.

Q. Then Oyler said something to you, did he?

A. He did.

Q. And you went outside?

A. Yes, sir.

Q. Where did you go outside?

A. I went out to room "A" by the door.

Q. At the door?

A. Yes, sir.

Q. Were you in room "A"?

A. No, not the room "A"——

Q. At the door?

A. Yes, sir.

Q. That is the door that leads from the hall into the kitchen?

A. That is right.

Q. You were there in the performance of your duty, were you?

A. I was.

Mr. Brancato: That is all.

Cross-examination by Mr. Price:

Q. How old are you?

A. Twenty-seven.

Q. Where do you live?

A. 331 Second Avenue, New York City.

Q. Have you always lived in New York City?

A. All my life.

Q. When were you first officially connected with the Narcotic Squad of the Internal Revenue Department?

A. February 9, 1922.

Q. Up to the time of this case had you ever gone out with Mr. Oyler and the other agents on these cases?

A. I did.

Q. What was your occupation on the 16th of February?

A. New York City——

Q. The 16th of January?

A. New York City policeman.

[fol. 291] Q. Where were you attached?

— At that time, the 13th Precinct.

Q. As a patrolman?

A. Patrolman.

Q. How long were you connected with the New York City police force?

A. Four and a half years.

Q. Did you resign?

A. I did.

Q. Were there any charges pending against you when you resigned?

A. There was not.

Q. You voluntarily resigned?

A. I did.

Q. How long have you known Mr. Oyler, before the 16th of January, 1922?

A. For about a year.

Q. A friend of yours?

A. Well, just through business.

Q. Had you ever been over to Brooklyn in the vicinity of 138 Union Street before the 16th of January?

A. I was not.

Q. Do you know Nunzio?

A. Yes, sir; by looks.

Q. Do you know him by the name of Nunzio?

A. I did. I do.

Q. Do you know him under any other name?

A. No, I don't.

Q. Do you know where he lived?

A. No, sir; I don't.

Q. Did you know his occupation?

A. No, I don't.

Q. Was he introduced to you?

A. No, he was not.

Q. Never introduced to you at all?

A. He was not.

Q. Now, on the night of the 16th of January you came over to Brooklyn with the other agents?

A. I did.

Q. Do you remember how you came to Brooklyn?

A. Yes, sir.

Q. How?

A. Took a Court Street car at Park Row over to Union Street and then walked about three or four blocks.

[fol. 292] Q. Do you remember, after you got off the car, whether you all stopped at the corner of Union Street and had a conference or not; had a talk with Oyler and the other men as to what each man was to do?

A. We got off the car. We did have a conversation; yes, sir.

Q. At the corner?

A. I don't just remember whether on the corner or a little off the corner.

Q. Was that the place where you all received your instructions as to where and what each one was to do?

A. No, we received them at the office.

Q. But you had a further talk about the case, didn't you?

A. Yes, sir.

Q. When you stopped and talked?

A. Yes, sir.

Q. After you stopped and talked, all the men started to walk down towards 138 Union Street?

A. Yes, sir.

Q. Do you remember who walked together?

A. No, sir; I don't.

Q. Do you remember on what side of the street that you walked down?

A. Well, I walked on the far side, across the way from 138 Union Street.

Q. That would be the right hand side going down?

A. Yes, sir.

Q. Do you remember whether or not Nunzio and Pasquale Napolitano walked down ahead of you?

A. They walked ahead of me and I don't just remember the side they walked on. I was in the rear of the other agents.

Q. When you walked down to 138 Union Street, how far ahead did you see Pasquale and Nunzio?

A. Sometimes they were about twenty-five feet and sometimes they were about fifty feet.

Q. Now, were you with Oyler or behind Oyler?

A. I was with him, sometimes behind him and in front of him.

Q. Did you walk down with any specified one of the agents?

A. No, I did not walk—

[fol. 293] Q. You walked with different men at different times?

A. Yes.

Q. When these two men, Pasquale and Nunzio, entered the premises at 138 Union Street, how far away from 138 Union Street were you?

A. Right across the way.

Q. That is directly opposite?

A. Directly opposite 138 Union Street.

Q. When you mention "directly opposite," the same as you are to this lawyer (indicating)?

A. I am.

Q. Which would indicate a straight line drawn directly opposite 138?

A. Probably, just not a straight line but I was right across the way.

Q. You were in front of the house, just directly opposite 138 Union Street?

A. Yes, sir.

Q. Where was Oyler at that time?

A. He was with me for a while and then he would walk to the next house.

Q. I did not ask you that; I asked you at the very time that you testified you were just in front of the house opposite 138 Union Street, as the two men, Pasquale and Nunzio, entered, where was Oyler?

A. I don't just remember right to my knowledge.

Q. Where was Manning at that time?

A. I don't just remember right to my knowledge where any of them were.

Q. Where was Pacetta?

A. That goes to all of them, counselor.

Q. You don't know where any of the agents were at that time, is that right?

A. No. That is right; just at that minute I don't.

Q. Then after the two men went into the premises of 138 Union Street, what did you do?

A. I watched for them to come out.

[fol. 294] Q. Where did you wait?

A. Across the way.

Q. Standing on the sidewalk?

A. No, in the doorway.

Q. Were you in the hallway behind the door or were you standing in the doorway?

A. No, just in the doorway.

Q. And while you were standing in the doorway, where was Manning?

A. I told you I don't remember.

Q. Where was Oyler?

A. I don't just remember.

Q. How long did you stand in that doorway before you say that you saw four men come out?

A. A few minutes.

Q. That may mean——

A. Five minutes.

Q. Is that your best opinion?

A. About that.

Q. During the five minutes, did you see any of the other agents?

A. I did, Manning and Oyler.

Q. Where were they?

A. Walking up. They would walk up one minute and walk down the next.

Q. What side of the street, the same side you were on or the opposite side?

A. At one time they were on my side.

Q. That is, they were on your side and then they would cross over and they would go back and forth; is that correct?

A. That is correct.

Q. Now, when the four men came out of the house; that is Pasquale Napolitano and Nunzio, whose last name you don't know, and Centorino and Alba came out, where were you?

A. There was only one man come out the first time, that was——

Q. I did not ask you about that, did I?

A. Well, I want to know what time you mean, when they came out?

[fol. 295] Q. Is there anything indefinite about my question which you do not understand?

A. I do not understand the whole question.

Q. All right. I will have it read so that you will understand it.

Mr. Price: Will your Honor permit the stenographer to read my question.

The Court: Very well.

(The last question was repeated by the reporter.)

A. Across the way in the doorway.

By Mr. Price:

Q. Where was Oyler?

A. He told me he would be in the next doorway.

Mr. Price: I move to strike that out.

The Court: Motion granted.

A. I don't know where he was.

By Mr. Price:

Q. Where was Manning?

A. I don't know where he was.

Q. You don't know where any of the agents were at that time, do you?

A. At that minute, I don't.

Q. The four men came out, you testified, and stood on the sidewalk; is that right?

A. Yes, they stood on the sidewalk.

Q. When you say, "They stood on the sidewalk," you mean Pasquale Napolitano—correct?

A. Yes.

Q. Nunzio?

A. That is correct.

Q. Centorino and Alba?

A. That is right.

Q. They stood on the sidewalk in front of Number 138 Union Street?

A. They did.

[fol. 296] Q. Of course, you did not hear what was said?

A. I did not.

Q. How far from the entrance of 138 Union Street did they stand?

A. About ten feet.

Q. Were they up toward Hicks Street or were they towards Columbia Street?

A. Towards Columbia Street.

Q. How long did they stand there?

A. About three or four minutes.

Q. After they stood there for three or four minutes, the three men entered the house, didn't they?

A. They did.

Q. And Centorino, the fourth man, went away?

A. He did.

Q. Did you follow him?

A. I did.

Q. Where did he go?

A. Went to 167 Columbia Street, the grocery store.

Q. Who went with you?

A. Agent Oyler.

Q. Anybody else?

A. Agent Manning was across the street.

Q. I did not ask you that; I asked you did anybody else go with you and Oyler?

A. Agent Oyler.

Q. Anybody else besides you and Oyler?

A. No, sir.

Q. Where did you and Oyler stand when the defendant Centorino entered the premises, 167 Columbia Street?

A. The opposite side of Columbia Street.

Q. Directly opposite?

A. No, not just directly opposite; may be fifty feet away.

Q. That is, to one side of the entrance?

A. Yes, sir.

Q. That would be diagonally across, not directly opposite?

A. Yes, sir.

[fol. 297] Q. You could not see what happened in the premises, 167 Columbia Street, from where you stood, could you?

A. I could not.

Q. Oyler was right alongside of you, wasn't he?

A. He was.

Q. How long did the defendant Centorino stay in Number 167 Columbia Street?

A. I should judge about ten minutes.

Q. Then he came out?

A. Then he came out with three other unknown men.

Mr. Price: I move to strike that out, after "He came out."

The Court: Motion granted.

By Mr. Price:

Q. Did they stop on the sidewalk, the men who came out in front of 167 Columbia Street?

A. No, they just kept walking.

Q. Was there more than four men that came out?

A. No, just four.

Q. And the four men never separated, did they?

A. They did, may be two feet apart, may be only one foot.

Q. Do you know who walked together from 167 Columbia Street to 138 Union Street?

A. No, they were all—two would walk and then they would split up and the opposite two would walk.

Q. You don't know the streets down there, do you?

A. Just Columbia Street and Union Street.

Q. Isn't it a fact—Stand up, Frank. You saw this boy, didn't you?

A. I did.

Q. Isn't it a fact—Sit down, Frankie—Isn't it a fact that Frankie Agnello, the defendant who just stood up, left 167 Union Street—

A. Columbia Street.

Q. Alone?

A. He did not.

[fol. 298] Q. Isn't it a fact that he walked through De Graw Street to Hicks Street, through Hicks Street to Union Street, down Union Street to opposite 138 Union Street and stood there?

A. No, he did not. He walked from Columbia Street to Union.

Q. That is an answer. He did not, you say. Isn't it a fact that the three defendants, Pace, Thomas Agnello and Centorino walked directly up in front of 138 Union Street?

A. Yes, sir; the three walked with the other defendants, the four walked together.

Q. When the three of them got in front of 138 Union Street, was not Frank Agnello on the opposite side of the street?

A. No, sir; he was with the other three.

Q. "No, sir," is an answer. Won't you please answer my questions?

Mr. Brancato: He has answered the question, if the Court please.

Mr. Price: I submit, Judge——

The Court: Will you please address your remarks to the Court rather than the witness.

Mr. Price: I ask your Honor to direct the witness that where an answer is susceptible of a yes or no answer, to answer it yes or no.

The Court: Please do that, Mr. Witness.

By Mr. Price:

Q. Isn't it a fact, Mr. Moog, that while Frank Agnello was opposite 138 Union Street the defendant Centorino beckoned at him to come over?

A. He did not.

Q. Isn't it a fact that after Centorino beckoned at him to come over that the four men went into the house?

A. The four men entered, but he did not come over.

[fol. 299] Q. Well, now, you were looking directly from across the street, you testified, to 138 Union Street, did you, at the time the men entered?

A. At the time the four men came back I was on the same side as 138 Union Street at that time.

Q. Were you directly in front of 138 Union Street?

A. When the four men came from 167 Columbia Street——

Q. Listen, I asked you a question.

A. No, I was not.

Mr. Price: Judge, won't you please again instruct the witness to answer the questions?

The Court: Can you answer the question yes or no?

The Witness: I will say "No." I will answer it "No."

Mr. Brancato: I object to Counsel asking questions of a general nature and expecting the witness to say yes or no. What time does he mean? Let him specify a particular time. The witness will tell just when.

The Court: If the witness does not understand what time a question is directed to, he may indicate that. He may ask him to what time he refers.

By Mr. Price:

Q. Is there any doubt in your mind as to what time I have been referring to?

A. No, there is no doubt.

Q. You know I am referring to the specific time when the two Agnello boys, Centorino and Pace entered 138 Union Street, isn't it?

A. Yes.

Q. You know I am referring to that, don't you?

A. I do.

Q. At the very moment that these four men whose names I have [fol. 300] just given you, entered 138 Union Street, you say that you were in front of 138 Union Street; is that right?

A. It is not right.

Q. Where were you at that very time?

A. I was on the same side as 138 Union Street, nearer to Columbia Street.

Q. How many feet would you say you were away from 138 Union Street at that time?

A. About twenty or twenty-five.

Q. As soon as they entered, you continued to walk toward 138 Union Street, didn't you?

A. After they entered——

Q. Please?

A. No.

Q. Did you cross the street when they entered 138 Union Street?

A. No.

Q. Did you stand where you were about twenty feet away from 138 Union Street when the defendants entered?

A. I did.

Q. How long did you stand there?

A. One minute.

Q. Then did you walk up to 138 Union Street?

A. I did not.

Q. Where did you walk to from where you were standing?

A. I crossed over on the far side of Union Street and then walked——

Q. That is, you crossed directly opposite from the place where you had been standing, twenty feet from 138 Union Street, to the opposite side of Union Street; is that correct?

A. I did.

Q. Then you walked up Union Street until you got yourself directly opposite 138, is that correct?

A. That is correct.

Q. When you got to directly opposite 138 Union Street, you looked across the street, did you?

A. I did.

Q. Did you stop and stand there?

A. I did.

Q. At that time?

A. I did.

[fol. 301] Q. Did you look into the windows "A" and "B" at that time?

A. I never looked in the window "B."

Q. Did you try to look through the window "B" to see whether there was a light burning in the room "B"?

A. I did not.

Q. You don't know whether at the time that you were opposite 138 Union Street, as you just testified to, whether or not there was a light burning in the room "B," do you?

A. I never looked in room "B" from the street.

Q. Then you don't know whether there was a light burning there, do you?

A. No, I do not.

Q. You want the jury to understand from your testimony that you looked inside, you looked into the room "A"?

A. I did.

Q. But you cannot tell whether there was a light burning in room "B"?

A. There was a light in room "A."

Q. In "B" I am asking you, sir.

A. I told you I never looked in room "B."

Q. I say you want the jury to understand that you looked in room "A" and you cannot tell whether there was a light burning at that specific time in room "B." Yes or no?

A. Counselor, I told you I never looked in room "B"; I don't know.

Q. You could see room "B" from where you were standing?

A. I could not; only "A."

Q. You could not?

A. I could not.

Q. From directly opposite you could not see?

A. I could not.

Q. You could not see whether there was a light burning?

A. I could not.

Q. Then you came across the street and entered the premises?

A. I did.

[fol. 302] Q. Do you know who entered the premises first?

A. Agent Oyler.

Q. Do you know how Manning got into the premises?

A. How many agents—

Q. Did you hear my question?

A. No, repeat it again.

Q. Do you know how Agent Manning got into the premises Number 138 Union Street?

A. I don't.

Q. Were you the last man to go in?

A. I was the second.

Q. The outside door indicated on Defendant's Exhibit A was not locked, was it?

A. It was locked.

Q. Did you have to break that door?

A. Yes, sir.

Q. Who broke the door?

A. Agent Oyler and myself.

Q. By pushing it?

A. By pushing it.

Q. Did you break the lock?

A. I don't know. I did not look at the lock.

Q. But you pushed against the door and the door opened, is that it?

A. Yes, sir; pushed against the door and the door opened.

Q. That is the outside door?

A. Yes, sir.

Q. Shown on this—may I come up?

The Court: Yes.

Q. (Continuing and showing witness photograph:) Shown on this Exhibit, Defendant's Exhibit A, is that correct?

A. That is correct.

Q. Will you put your initial under the door that you say you and Oyler broke in? Come down to the table.

A. I can mark it here.

Q. On the bottom of the door; right at the foot of the door.

A. Here is the door that I kicked in.

Q. Put your initial on the door; not your name, but your initial.

A. (Witness does as requested.)

[fol. 303] Q. You indicate the door that you kicked in with Oyler by the initials—is that "J. M."?

A. "J. W."

Q. "J. W." indicated on Defendant's Exhibit A?

A. Yes, sir.

Q. The door on this Defendant's Exhibit A which you said was kicked in, leads to a vestibule, does it not?

A. It does.

Q. How big is that vestibule, approximately?

A. Oh, about eight feet.

Q. Is there another double door inside the vestibule?

A. There is.

Q. That also was locked?

A. That was open.

Q. Did you open that door—so you opened that door and you just walked through?

A. No, it was open, the door was back, hooked back.

Q. Was it a single door or a double door?

A. A double door.

Q. One-half of the door was open, or the entire door?

A. One-half.

Q. And you walked in?

A. Then we walked in.

Q. Then you came up to the door leading from the hallway into the kitchen "A," indicated on Exhibit A, is that right?

A. Yes, sir.

Q. Was that door open too?

A. That was locked.

Q. You and Oyler broke that door in?

A. We did.

Q. Then you walked or ran into the room "A"?

A. Walked in.

Q. Now, at the time that the first door was broken by you and Oyler, indicated by the initials "J. W.," had a shot been fired?

A. There was, I heard it, the shot.

Q. That is, before you broke the door or just as you broke the door?

A. I just don't remember now. After we broke the door I heard the shot.

[fol. 304] Q. After you broke the door indicated by the initials "J. W."?

A. Yes, sir.

Q. While you were in the vestibule a shot was fired?

A. Yes, sir.

Q. Then you and your brother officers went in the other door which you had broken?

A. Yes, sir.

Q. As soon as you got into the room "A," indicated on Defendant's Exhibit A, did you see Nunzio and Pasquale Napolitano?

A. No.

Q. What did you do when you got into the room "A"?

A. Went into the room "B."

Q. And that was the first time that you saw the two informers, Nuncio and Pasquale, in the premises?

A. Yes, sir.

Q. After you went into the room "B," pursuant to instructions, you went outside and stood in the doorway of the room "A," is that correct?

A. Yes, sir.

Q. You don't know anything about what happened in the room while you were in the doorway?

A. Only I saw two blue packages on the table.

Q. You only saw two, is that right?

A. Yes.

Q. You looked right at the table, didn't you?

A. No, I just—yes, I did look at it.

Q. There was a light in the room?

A. There was a light in the room.

Q. You looked at the table?

A. I did.

Q. There was just two blue packages?

A. That is all I saw.

Q. You saw the other men in the room?

A. Yes, sir; I did.

Q. You saw Manning in the room?

A. Yes.

Q. And Oyler and all the agents?

A. Yes, sir.

[fol. 305] Q. How long were you in the premises before the defendants were taken?

A. I don't know; about twenty minutes.

Q. Do you know where the defendants were taken?

A. I don't.

Q. Who took the defendants away, if you know?

A. I just don't remember. Two agents took them away; I don't just remember.

Q. Do you remember what two agents?

A. No, I do not.

Q. You know they were taken to the police station, weren't they?

A. I know the patrol wagon came. I don't know which agents.

Q. You know, as a matter of fact, they were take- to some police station?

A. I do. I don't know where.

Q. You don't know where?

A. No, sir.

Q. Now, during the time that you were in the Police Department, did you always work as a patrolman?

A. I did not; no, sir.

Q. Were you ever in the detective bureau?

A. I was.

Q. What detective bureau were you in?

A. The Narcotic Squad.

Q. Was that under the "Branch" system?

A. Yes, sir.

Q. What Branch were you in?

A. That is called the Narcotic Squad; Squad Number 3.

Q. That is a special service squad, isn't it?

A. No, sir.

Q. Isn't it an inspector's squad?

A. No, sir.

Q. In the Detective Bureau?

A. Yes.

Q. Were you a first grade detective sergeant?

A. No sir; second grade.

Q. How long did you serve as a second grade detective sergeant?

A. I served as a plain clothes man, white shield, thirteen months.

[fol. 306] Q. Is that an answer to my question?

A. No, I did not serve as a detective sergeant.

Q. You never served as a detective sergeant, did you?

A. No.

Q. When you tell these men that you did serve as a detective sergeant, you know that is not the fact?

A. No, I misunderstood your question.

Q. You served as a patrolman in plain clothes under an Inspector, didn't you?

A. No, sir; under a Captain.

Q. Who was your superior?

A. Captain Shreve, head of the Narcotic Squad.

Q. Who was his superior, the Inspector?

A. Yes, sir; Inspector Coghlan.

Q. When did you serve your thirteen months in plain clothes?

A. You mean the months, the time?

Q. Yes.

A. 1918, I am not just sure, 1918 or 1919.

Q. Isn't it a fact——

A. No, I beg your pardon, from 1919 to 1920.

Q. Isn't it a fact that you were in this squad at the time that you were transferred to the 13th precinct?

A. No, I was not.

Q. Where were you transferred from the Narcotic Squad to?

A. The Third Inspection District Office, under Inspector Boettler.

Q. So you did serve as an Inspector's man, didn't you?

A. I did, later on.

Q. How long did you serve as an inspector's man?

A. Ten months.

Q. Was that up to the time that you were transferred to the 13th precinct?

A. Yes, sir; no, I went to the 103rd Precinct and then to the 13th.

Q. And shortly after that you resigned?

A. No, about nine months after that I resigned.

[fol. 307] Q. During the time that you worked in these squads, the Inspector's Squad and the Narcotic Squad, you were in plain clothes?

A. Yes, sir.

Q. When you were transferred back to the precinct you were put on patrolling the streets?

A. I was.

Q. Now, you know the difference between a plain clothes man and a detective sergeant, don't you?

A. I do.

Q. There was a difference in the badge too, wasn't there?

A. Yes, sir.

Q. You never had a detective's badge, did you?

A. No, sir.

Q. A detective badge is a different shaped badge made out of different metal, isn't it?

A. It is.

Q. What metal is it made out of?

A. It is yellow to me.

Q. Bronze?

A. No, it is yellow.

Q. A sort of gold?

A. A yellow metal.

Q. You did not hear any talk in the premises 138 Union Street, did you, between anybody?

A. No.

Mr. Price: That is all.

Mr. Kesselman: I have no cross examination.

Miss BELLE McMAHON, called as a witness on behalf of the United States, and having been first duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. You are a deputy collector of this district?

A. Yes, sir.

Q. As such deputy collector, what particular branch of the service are you attached to?

A. In charge of the Narcotic Records.

[fol. 308] Q. Have you got charge of the Narcotic Records, which show all the persons who have registered their names, style and places of business who were selling or dealing in narcotics?

A. Yes, sir.

The Court: Within this District?

By Mr. Brancato:

Q. Within this District?

A. Yes, sir.

Q. At my request, or at the request of the District Attorney's Office, have you made a search of your records, Narcotic Records, as to whether Frank Agnello, Thomas Agnello, James Pace, Stephen Alba, Antonio Centorino, have registered their names, style, place of business or place where a business of selling narcotics can be carried on; have you made that search?

A. I have.

Q. Have you found as to whether or not they have registered their names with the Collector of this District?

A. No, they have not.

Q. They have not?

Mr. Wackerman: I object to the answer and move to strike it out on the ground that it is not responsive.

The Court: Motion denied.

Mr. Wackerman: Exception. I want to take objection and exception to the testimony that they were not registered; he asked, "Did she search?"

Mr. Brancato: She said "Yes."

Mr. Wackerman: May I have the question read?

(The last question and answer was repeated by the reporter.)

[fol. 309] Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and not the proper way of proving it, and move to strike out the answer.

Mr. Wackerman: I object to it on the ground that it is incompetent and immaterial.

The Court: Objections overruled.

Mr. Price: Exception.

Mr. Wackerman: Exception.

Mr. Wackerman: On the further ground that the Government has

not shown that these defendants are in the class required to register, and hence the evidence is incompetent.

The Court: Objection overruled.

Mr. Wackerman: Exception.

I am objecting to it on the further ground on behalf of the defendant Frank Agnello on the ground that the most the Government has shown in this case is that defendant Frank Agnello was—the most they have shown is that he may have had possession.

Mr. Brancato: I object to Counsel stating what we have shown. Let him put his objection in the proper way and what the grounds of his objection are.

Mr. Wackerman: Suppose that you let the Court pass on my objection. I am objecting to any testimony of this witness in regard to the defendant Frank Agnello on the ground that the Government has failed to prove any sale by the defendant Frank Agnello, and in the absence of evidence of sale there is no proof of two things; one that the defendant is in the class required to register; the statute does not require that; the second ground is that possession is not a crime and it does not require the payment of a tax. [fol. 310] The Court: Objection overruled.

Mr. Wackerman: Exception.

Mr. Kesselman: I make the same objection on behalf of the defendants whom I represent.

The Court: Objection overruled.

Mr. Kesselman: Exception.

By Mr. Brancato:

Q. You say that you made a search of those names in your records; is that right?

A. Yes.

Q. Have you found, after searching your records, have you ascertained whether or not these defendants have registered their names?

A. No.

Q. Have they registered their names?

A. No.

Mr. Price: I object to it and move to strike out the answer.

The Court: Objection overruled and motion denied.

Mr. Price: I except.

By Mr. Brancato:

Q. Have they paid the tax prescribed by law?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and calls for a conclusion.

The Court: Objection overruled.

Mr. Price: I except.

A. No.

Mr. Brancato: That is all.

Mr. Wackerman: I have one or two questions.

Cross-examination by Mr. Wackerman:

Q. Will you read off the names that you have there?

A. Frank Agnello, Thomas Agnello, James Pace, Stephen Alba and Antonio Centorino.

[fol. 311] Q. And when did you get that paper?

A. Mr. Gillies came up around half past ten.

Q. Just now?

A. Yes. I don't know what time it is now.

Q. The book in which these names are kept contains the name of every person in this District required to register?

A. They are not kept in the book.

Mr. Brancato: I object to the question on the ground that there is no evidence of a book. It may be a card system. I don't know. I think we ought to find out first.

The Court: Objection overruled.

By Mr. Wackerman:

Q. Does the book or file contain the names of every person in this District required to register?

A. Yes, sir.

Q. Physicians and everybody else?

A. Yes.

Mr. Wackerman: That is all.

Mr. Brancato: That is all.

The Court: Who is your client?

Mr. Wackerman: Frank Agnello and Alba.

COLEMAN MANNING, recalled as a witness by the United States, testified as follows:

Redirect examination by Mr. Brancato:

Q. You brought in to Court here Monday a bag containing some envelopes with the Government exhibits marked for identification?

A. I did.

Mr. Wackerman: That is objected to—Just a minute—on the ground that it is incompetent and there is no proof of any bags brought here.

[fol. 312] The Court: Objection overruled.

Mr. Wackerman: Exception.

By Mr. Brancato:

Q. You got those exhibits from whom on Monday?

A. Mr. Connolly.

Mr. Wackerman: Just a minute. I am objecting and move to strike it out the ground that he did not get the exhibits from anybody. There are no exhibits in this case except these blue packages.

Mr. Brancato: That is what we are talking about.

Mr. Wackerman: You are not.

Mr. Brancato: The exhibits marked for identification.

The Court: Objection overruled.

Mr. Wackerman: I am objecting to it unless the Court instructs Mr. Brancato to confine himself to these particular packages.

Mr. Brancato: That is what we are talking about.

By Mr. Brancato:

Q. Those packages are marked in evidence, or marked for identification, and the other two which were taken out here by the chemist yesterday in open Court—you got those from Connolly on Monday?

A. I did.

Q. And brought them in Court here?

A. I did.

Q. From the time that you got them from Connolly until you brought them in Court, was there any change that took place in those packages; were they opened in any way?

A. Positively not.

Q. Were they in your possession all the time?

A. They were.

[fol. 313] Q. Delivered here in Court?

A. They were.

Q. Have been here ever since?

A. Positively.

Mr. Brancato: That is all

Recross-examination by Mr. Price:

Q. Since you have been, since you have testified in this case, have you seen Nunzio?

Mr. Brancato: I object to any further cross examination on this point. This man is brought here for the purpose of identifying these exhibits.

The Court: Do you make him your witness on this point?

Mr. Price: I do not think I am called on——

The Court: A question of that sort has nothing to do with his direct examination.

Mr. Price: I am just going to ask him one question.

The Court: Will you make him your witness?

Mr. Price: All right, I will make him my witness.

The Court: Objection overruled. He is the defense's witness.

By Mr. Price:

Q. Did you see Nunzio since you have testified?

A. I have.

Q. Have you spoken with him?

A. I have.

Q. Who else spoke with him?

A. I don't know.

Q. Did Mr. Oyler speak to him in your presence?

A. He did.

Q. And did the other men speak to him in your presence?

A. I don't think so.

[fol. 314] Q. Did Pasquale speak to him in your presence?

A. He did.

Q. Did you ascertain his name, his last name, since you testified?

A. I don't know it now.

Q. You did not ask him that?

A. I did not.

Mr. Price: That is all.

Mr. Brancato: That is all. That is the truth.

Mr. Price: I object to Mr. Brancato's remarks.

Mr. Brancato: He is the defendant's witness. I concede that he has told the truth. Does he want me to lie about it?

Mr. Price: You do not have to concede anything for me.

HAROLD B. GAMMELL, recalled as a witness by the United States, testified as follows:

Redirect examination by Mr. Brancato:

Q. Did you receive two packages here yesterday which have been marked for identification?

A. I did.

Q. Have you made an analysis of those packages, of the contents of those packages, to see what they contained?

A. I did.

Q. What do they contain?

A. Cocaine.

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial, no proper foundation having been laid, and on the further ground that there is no evidence here that the exhibits given to this witness are in the same condition yesterday as they were on the 16th of January.

The Court: Objection overruled.

[fol. 315] Mr. Kesselman: The same objection on behalf of the defendants I represent.

The Court: Objection overruled.

Mr. Wackerman: The same objection on behalf of the defendants I represent.

The Court: Objection overruled.

Mr. Wackerman: Exception.

By Mr. Brancato:

Q. You say that you made an analysis of those contents?

A. I did.

Q. What does it contain?

A. Cocaine hydrochloride.

Mr. Wackerman: Now, if the Court please, at this point I object and move that the answer be stricken out on the ground that that is not contained in the indictment. I think that in order to save any possible question in the future, that this objection was not properly taken, I want to state the grounds of my objection and the reasons for them to the Court at this time.

The reason I am objecting to any evidence of cocaine is that a reading of the indictment in the plain form in which it is written without any punctuation marks or anything else reads as follows:

"The defendants are charged"——

Mr. Brancato: What count are you reading from?

Mr. Wackerman: From the conspiracy, the first page.

Mr. Brancato: The first count?

Mr. Wackerman (reading): "Confederated and agreed together to sell a large quantity of heroin, which is a derivative of opium and [fol. 316] cocaine, which is a derivative of coca leaves." Now, a plain reading of that indictment means this, that they conspired to sell a large quantity of heroin, which is a derivative of opium and cocaine, the combination of those two being a derivative of coca leaves.

Had this indictment been drawn in the proper form, it would have alleged as follows:

"To sell a large quantity of heroin, which is a derivative of opium and to sell a large quantity of cocaine, which is a derivative of coca leaves."

A plain reading of this indictment, as your Honor will notice shows that there is no punctuation; there is nothing to separate the heroin from the cocaine——

The Court: Did the defendant understand, that is, your defendant, that he was being put on trial on a charge of having been concerned with the conspiracy to sell or with an actual sale of a substance described as heroin, which is a derivative of cocaine?

Mr. Wackerman: That is the point I am making.

The Court: Do you mean "Yes," that he did so understand?

Mr. Wackerman: I am about to state the reason to your Honor, when I made this objection yesterday. I had read this indictment six times at least and the only thing I could understand from it was that they were charged with the crime of selling heroin, a derivative of opium and cocaine. That is the reason I made the objection. [fol. 317] That is the reason I was surprised when your Honor told me that it also charged the crime of selling cocaine. A plain reading of it means nothing but the other.

The Court: It is clearly on the record. Objection overruled.

Mr. Wackerman: Exception.

Mr. Kesselman: I make the same motion on behalf of the defendants I represent.

The Court: Motion denied.

Mr. Kesselman: Exception.

By Mr. Brancato:

Q. That is a derivative of coca leaves, is it?

A. Yes, sir.

Mr. Brancato: I offer the packages in evidence.

Mr. Price: I object to them on the ground that they are incompetent, irrelevant and immaterial, not connected with my defendant, not shown to be in the same condition that they were when they were taken on the 16th of January, 1922.

The Court: Objection overruled.

Mr. Price: Exception.

Mr. Wackerman: The same objection.

The Court: Objection overruled.

Mr. Wackerman: Exception.

Mr. Kesselman: The same objection.

The Court: Objection overruled.

Mr. Kesselman: Exception.

Sample marked "Exhibit No. 5."

Cross-examination by Mr. Price:

Q. Is this substance adulterated?

A. No, sir.

Q. Have you tested it to see whether or not it was adulterated?

A. I did.

[fol. 318] Q. You say that it is not adulterated?

A. It is pure cocaine hydrochloride.

Mr. Wackerman: No questions.

Mr. Kesselman: No questions.

The Court: Have you finished?

Mr. Wackerman: I move to strike out the testimony of this witness and move that this package offered in evidence be not received on the ground first that the Government has failed to show—

Mr. Brancato: If the Court please, I submit that this is not the proper time to make any motion. The Court has admitted those things in evidence. Now, if any motion is to be made, the time to move—

The Court: He moves to strike them out now.

Mr. Wackerman: On the ground that there is no testimony showing that the packages offered in evidence contains more than two grains of opium and more than one-fourth grain of morphine; more than one-eighth grain of heroin or more than one grain of codeine.

The Court: Motion denied.

Mr. Wackerman: Exception.

GILBERT H. MOODY, called as a witness on behalf of the United States, being duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. What is your business?

A. I am a clerk in the Internal Revenue Department.

[fol. 319] Q. What particular office are you assigned to as a clerk?

A. The Internal Revenue Department Laboratory.

Q. Who is employed there, employed as Chemists?

A. Mr. Robert E. Edson and Mr. Gammell.

Q. That is, the previous witness, is that right, the man who just testified here?

A. I was not in here, sir.

Q. (Stand up, Mr. Gammell.) That is the gentleman who was also a chemist in your office?

A. Yes, sir.

Q. Is there a safe in your office?

A. Yes, sir.

Q. Has that safe got a key?

A. No, sir.

Q. What has it got?

A. It has a combination.

Q. Do you know the combination of that safe?

A. I do.

Q. What is kept in that safe?

A. Narcotic samples, the aluminum ware that is used in the analysis.

Q. Narcotics are kept there; is that right?

A. Yes, sir.

Q. The samples that are received from the Narcotic Agents?

A. Yes, sir.

Q. For examination?

A. Yes, sir.

Q. Do you know the combination of the safe?

A. I do.

Q. What relations, or what occasions have you got to go to the safe?

Mr. Wackerman: That is objected to as incompetent and immaterial.

Mr. Brancato: Question withdrawn.

By Mr. Brancato:

Q. Do you ever have occasion to go to that safe?

Mr. Wackerman: That is objected to as incompetent and immaterial.

[fol. 320] The Court: Objection overruled.

Mr. Wackerman: Exception.

A. Very frequently.

By Mr. Brancato:

Q. What occasions do you have and what do you do when you go to the safe?

A. I often go in to take the samples out for analyses when they are asked for; often to file them when I am instructed to and often to open it for the chemist.

Q. That is, the chemist will tell you to "Get me" a particular narcotic or package, is that right and you will go to the safe and take it out and bring it to the chemist?

A. Sometimes and sometimes he goes himself.

Q. Sometimes he goes himself?

A. Sometimes he goes himself.

Q. Sometimes he will give it back to you to put back into the safe, is that right?

A. Yes, sir.

Q. Now, at any time, and whenever you are required or asked to take packages of narcotics from that safe to bring to the chemist, do you ever open the packages and put some substance inside?

A. No, sir.

Q. Did you ever do that at any time when you were employed in that office?

A. No, sir.

Q. Did you ever see these packages, Mr. Moody? I show you now various exhibits marked—did you ever see these packages; can you tell whether you saw them or not?

A. I have seen that one (indicating.)

Q. Which one is that?

A. That is Government Exhibit 5, in evidence. I have seen this one.

Q. That is Government's Exhibit 4, in evidence?

A. I have seen this one (indicating.)

[fol. 321] Q. That is Government's Exhibit 7, in evidence. Where did you see them, Mr. Moody?

A. I saw them in the laboratory.

Q. Did you have any handling of these packages?

A. I did.

Q. Just in what way?

A. When the samples came in, I stamped the article. Mr. Gammel or at least one of the attendants, received them, opened and they were passed over to me to make up entries on them, proper records, after which I returned the samples to the chemist.

Q. How can you tell now that these are the packages which you

saw and which were handed to you to make an entry of; is there anything on the papers?

Mr. Price: I object on the ground that it is incompetent, irrelevant and immaterial and calls for a conclusion.

The Court: Objection overruled.

Mr. Price: Exception.

By Mr. Brancato:

Q. How can you tell, Mr. Moody? Is there anything on these packages whereby you can tell that these are the packages which were handed to you at that time to make an entry of?

A. There should be.

Q. What is it?

A. The first thing, first my stamp on it, the next thing, there is the chemist's initials, another thing, there is our stamp, our laboratory stamp. That is on that one (indicating).

Q. I see.

A. Here are the stamps and initials on this one and also this one (indicating).

Mr. Brancato: Your witness.

Mr. Price: No questions.

Mr. Brancato: That is all.

[fol. 322] RAY CONNOLLY, recalled as a witness by the United States, testified further as follows:

Re-direct examination by Mr. Brancato:

Q. Pursuant to a request made a little while ago in Court, did you get from the office the order requiring Agent Pacetta to leave New York and go outside—

Mr. Kesselman: I object to the form of the question.

The Court: Objection sustained.

By Mr. Brancato:

Q. Did you get a written order of some kind?

A. I did.

Q. Have you got it?

A. I have.

Mr. Brancato: I offer that in evidence.

Mr. Price: I object to it upon the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Brancato:

Q. You testified this morning that Agent Pacetta was ordered to Florida, but you did not know the exact date?

A. I did.

Q. That is true, isn't it?

A. Yes.

Mr. Kesselman: I object to it upon the ground that it is incompetent, irrelevant and immaterial and already answered.

The Court: Objection sustained.

Mr. Kesselman: I move to strike out the answer.

The Court: Granted.

[fol. 323] By Mr. Brancato:

Q. Can you tell us now on what date Agent Pacetta was ordered away from New York?

Mr. Kesselman: I object to the form of the question.

The Court: Objection sustained.

By Mr. Brancato:

Q. Can you tell us when it was that instructions were received?

A. March 2nd.

Mr. Kesselman: Wait a minute. I object to the form of the question upon the ground that it is leading and upon the further ground that it calls for a conclusion, as to when he was ordered.

The Court: Objection sustained.

Mr. Kesselman: I move to strike out the answer.

The Court: Motion granted.

By Mr. Brancato:

Q. Did you testify this morning, Mr. Connolly, that you did not know when instructions were received by Pacetta?

A. I testified that I did not know the exact date.

Mr. Kesselman: I object to it on the ground that the question has already been answered.

Mr. Brancato: I object, it has not been answered.

Mr. Kesselman: You just asked him if he did not testify to that this morning.

The Court: Objection sustained.

Mr. Kesselman: I move to strike out the answer.

[fol. 324] The Court: Motion granted.

By Mr. Brancato:

Q. I show you this paper and ask you if you know what it is?

Mr. Kesselman: Just answer that yes or no.

Will your Honor instruct the witness to answer that yes or no?

The Court: Yes, answer it yes or no.

A. Yes, sir.

By Mr. Brancato:

Q. Where did you get it from?

A. Received through the mails.

Q. Addressed to whom?

A. The agent in charge, Mr. Ralph H. Oyler.

Q. When was it received?

A. March 3rd.

Mr. Brancato: I offer it in evidence.

Mr. Kesselman: Objected to upon the ground that it is incompetent, irrelevant and immaterial, and not binding on these defendants.

Mr. Price: I make the same objection.

Mr. Brancato: It is for the purpose of explaining the absence of the witness; that is all.

The Court: Objection sustained.

Mr. Brancato: Now, if the Court please——

The Court: Mr. Brancato, the Court has carefully considered the proposition involved and asks the Government to proceed with the trial, provided you are about to argue the admissibility of this proof.

Mr. Brancato: I am going to prove——

[fol. 325] Mr. Price: I submit that Mr. Brancato should not make any statement—your Honor has ruled on it.

Mr. Brancato: In reference to the absence of a witness here, I have a right to explain, if the Court please.

The Court: Well, you have explained it.

Mr. Price: I think he has explained that, if the Court please.

Mr. Brancato: Sufficiently, to the Court and jury, do you concede that?

Mr. Price: No. I ask your Honor to instruct Mr. Brancato not to make any speeches or statements. Your Honor has seen the paper and your Honor has ruled on the evidence half a dozen times.

The Court: Go right along with the witness Connolly. Is there any further testimony?

Mr. Brancato: Yes, I am going to get this paper in evidence if I can get it.

Mr. Price: I submit such a statement is unfair in view of your Honor's repeated rulings and admonition, still he insists on making speeches here.

Mr. Brancato: I assume the objection stands to the form of the question, not the——

Mr. Price: And the admissibility of the paper itself. I will tell you that now, Mr. Brancato.

The Court: The Court rules that the paper which Mr. Brancato holds in his hand is inadmissible in evidence.

Mr. Brancato: Under any conditions?

The Court: Under any conditions.

Mr. Brancato: If that is the case, we cannot do any more.

[fol. 326] WILLIAM J. MELLON, called as a witness on behalf of the United States, having been first duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. What is your occupation?

A. Revenue Department, attached to the Narcotic Division.

Q. You are working also under Mr. Oyler?

A. I am.

Q. Were you one of the arresting officers on January 16th?

A. I was.

Q. One of the men who arrested these defendants?

A. Yes, sir.

Q. At No. 138 Union Street, Brooklyn?

A. Yes, sir.

Q. Now, tell us what you did from the time that you got down there near 138, what happened, what you saw yourself, until these men were taken to the station house in the patrol wagon?

A. On January 14th, on a Saturday night—

Mr. Price: I object to that, your Honor, the question is what he did on the 16th of January.

By Mr. Brancato:

Q. Tell us what you did on January 16th; that is the night of the arrest, Monday, when you got down to 138; just answer that question first?

A. Well, I stood about a block away from 138 Union Street watching Officer Manning, and as Officer Manning proceeded towards the house, I followed him. We got towards the house. He was on the outside of the railing, the railing in front of the house, and climbed inside the railing, got to the one window and I got to the other window. A shot was fired, the glass came down. I saw all the men [fol. 327] from the inside of the place run into the room adjoining the kitchen. I then proceeded into the apartment through the hall.

Q. When you got into the apartment were any of the other agents there ahead of you?

A. Yes, sir.

Q. How many were there before you, if you know?

A. Well, Agent Oyler, Pacetta, McCormick and Connolly.

Q. I show you this photograph, Defendant's Exhibit A, which is the representation of the outside of that house; do you recognize it?

A. This is the house.

Q. Did you go in a room, go through room "A," the kitchen?

A. I did; that is where I stood before I went in.

Q. Before you went into where?

A. Before I went into the apartment I stood in front of that window.

Q. On the outside?

A. Yes, sir.

Q. Then you went into the apartment?

A. Yes, sir.

Q. Going into the apartment, did you go in the first door to your right as you enter the hall?

A. Yes, sir.

Q. Then you entered the apartment, which is the kitchen?

A. Yes, sir.

Q. The first room, isn't it?

A. Yes, sir.

Q. After you got into the kitchen, the first room, just tell us what you did?

A. When I got into the kitchen, I looked around and I saw Connolly standing at the door. There was a woman sitting at the table.

Q. In what room was the woman sitting at the table?

A. In the kitchen. I walked into the other room. I saw all these men lined up. I walked into the bedroom, the room right back [fol. 328] of that, and started looking around, and underneath the bed I found a blue package which afterwards contained—

Mr. Price: I move to strike that out.

The Court: Granted.

By Mr. Brancato:

Q. You say that you found a blue package?

A. Yes, sir.

Q. Did you take it up; did you pick it up?

A. Yes, sir; I did.

Q. What did you do with it?

A. Handed it to Agent Oyler.

Q. Then what did you do after that?

A. Then I searched some of the prisoners, searched all around the place, and after we were through searching, why Connolly and I took the prisoners to the police headquarters in the patrol wagon.

Mr. Price: I did not get the last part of the answer.

(The answer was repeated by the reporter.)

By Mr. Brancato:

Q. Were these five defendants the ones who were arrested in that room that night?

A. Yes, sir.

Q. Before the 16th of January, had you seen any one of these defendants?

A. No, sir.

Q. Before the 16th of January, did you go to 138 Union Street?

A. I did.

Q. With whom?

A. With Manning, Connolly, Pacetta and myself.

Q. Were there any other men besides you four agents?

A. Yes, sir.

[fol. 329] Q. Who?

A. Patsy Napolitano.

Q. Who else?

A. Another one, a man—

Q. What is his name?

A. I don't recall his name.

Q. Did they go inside the apartment?

A. They did.

Q. And they came back, did they, after some time?

A. Yes, sir.

Q. When they came back did you see them?

A. Yes, sir.

Q. At the time that you saw them when they came back, were the other agents with you?

A. Yes, sir.

Q. Where?

A. Down on Union Street, Degraw Street; one of those streets right nearby, because the other agents were nearer towards them than I was. They had already spoke to them.

Q. You were scattered, weren't you?

A. Yes, sir.

Q. They came back, the two men, Napolitano and the man whose name you don't know?

A. Yes, sir.

Q. Is it Nunzio?

A. That is right.

Q. When Napolitano came back with Nunzio, did they have a talk with you men?

A. Yes.

Q. You went back the following Monday?

A. Yes, sir.

Mr. Brancato: That is all.

Cross-examination by Mr. Price:

Q. Officer, I show you a photograph and ask you if that is a representation of part of the building No. 138 Union Street on the night you went there, after the shot was fired?

A. Not the window. There was no snow there.

[fol. 330] Q. There was no snow there?

A. Not the bottom window. What is that supposed to be, a glazed window?

Q. Look at the photo; was that the window of the room off of the kitchen?

A. No, that was—Yes, that is the window of the room off the kitchen.

Q. Was that the condition of the window after the shot was fired?

A. No, sir.

Q. Was it broken in that way?

A. No, sir; the window was broken on top.

Q. You are sure about that?

A. Yes, sir.

Mr. Price: I offer this for identification.

The photograph is marked Defendant's Exhibit B for identification.

By Mr. Price:

Q. Was there any snow on the ground on the 14th?

A. On the 14th?

Q. Yes.

A. Well, there might have been some snow on the ground the 14th. It was not snowing on that day. There was some snow on the ground.

Q. Was there some snow on the ground on the 16th?

A. Not that I remember.

Q. As I understand your testimony here you say that you were a block away from 138 Union Street, watching Manning go?

A. Yes, sir.

Q. What street were you on?

A. I don't know whether you call it Degraw Street; it was the next corner to your left as you go into the building.

Q. Were you on Union Street?

A. No, sir.

Q. You were not on Union Street?

A. No, sir.

Q. You were a block away from Union Street?

A. I was in the block facing Union Street, but I could see Agent [fol. 331] Manning. I kept him under observation. When he moved toward the house I moved with him.

Q. You say that just as you got to the railing, Manning was at the railing?

A. Manning was already at the railing.

Q. He was at the railing when you got to the railing?

A. Yes, sir.

Q. That was the railing shown on Defendant's Exhibit A?

A. That iron railing, yes.

Q. When Manning got to the railing, and you were at the railing, you testified you looked into the room "A"?

A. I looked into the kitchen.

Q. That is room "A," isn't it?

A. Yes, room "A."

Q. Manning went up against the window of the room "B" and fired a shot?

A. Yes, sir.

Q. Then the door was broken in and everybody went inside?

A. Yes, sir.

Q. You testified that when you got inside there were three agents in there, did you not?

A. Yes, by the time I got through covering the window.

Q. There were three men in there, three of the agents?

A. Yes, sir.

Q. Is that right?

A. Yes, that is right.

Q. Oyler, Connolly and McCormick?

A. That is right.

Q. They were in?

A. Yes, sir.

Q. Did you see Manning come in?

A. I think Manning went in through the window.

Q. What window?

A. I don't know.

Q. You don't know how Manning got in, as a matter of fact?

A. No, I don't know how he did get in.

Mr. Price: That is all.

[fol. 332] Cross-examination by Mr. Kesselman:

Q. Was there anything in the area, that is, between the gate and the building directly in front of room "B"?

A. I think there was.

Q. On the 16th of January?

A. I think there was something like the side of a pushcart.

Q. You know that there was a pushcart there, don't you?

Mr. Brancato: He says that he did. I object to counsel's tone of voice; no use of getting excited.

Mr. Kesselman: I ask your Honor to instruct Mr. Brancato to please remain quiet, unless he has some objection to make.

Mr. Brancato: I object to the form of the question.

Mr. Kesselman: Try your own tone of voice, first.

The Court: Objection overruled.

By Mr. Kesselman:

Q. Officer, you know that there was a pushcart?

A. I don't know whether it was a pushcart.

Q. You said something like a pushcart?

A. Yes, sir.

Q. Wasn't that standing directly in front of what you have designated as window "B"?

A. No, sir.

Q. Where was it?

A. On the side from it.

Q. Just show me on that exhibit where; just indicate on this picture, Defendant's Exhibit A?

A. It was over on the side; somewhere on this side.

Q. Well, there is a railing right there, isn't there?

[fol. 333] Mr. Brancato: Let him point out where it is.

A. Right there. (Indicating.)

The Court: The witness indicates the extreme right of the picture.

By Mr. Kesselman:

Q. To the extreme right on Defendant's Exhibit A there is an iron gate, isn't there?

A. I don't know.

Q. Look at it?

A. There is in the picture. I do not know whether it was there or not. The picture shows an iron gate.

Q. Will you say that there was not an iron gate there on the 16th of January?

A. No.

Q. The adjoining building was just being constructed at that time, wasn't it; that is, to the west of this number 138 Union Street?

A. I think they were working on that building, yes.

Q. How large was this pushcart?

A. You have got me. All I remember was an object standing on a slant.

Q. That would be from the ground up towards the window, wouldn't it?

A. Yes, about that.

Q. How much of that pushcart covered the window of the room "B"?

A. About a third of it.

Q. Did it stand up in the air?

A. On the side.

Q. When you say on the side——

A. On the side adjoining the other building.

Q. Do you say that did not touch the window or cover the window at all?

A. It may have touched the window; I don't remember.

Q. It extended up, didn't it?

A. All I remember is Agent Manning going on that side. I climbed over the railing at my own window.

Q. That is all you know about your story, that you climbed in?

A. Yes, sir.

[fol. 334] Q. Will you tell the Court and Jury how high the pushcart extended up in the direction of that window?

A. I don't remember.

Q. Give us your best idea, won't you?

A. May be five or six feet.

Mr. Kesselman: That is all.

Redirect examination by Mr. Brancato:

Q. You did not have a plumb with you to measure the cart, did you?

A. No.

Q. Or the angle?

A. No.

Q. (Continuing:) Upon which this pushcart or object was slanting, whether it was perpendicular or parallel?

A. No, sir.

Q. You did not have a plumb, did you?

A. No, sir.

NUNZIO DISPENZA, called as a witness on behalf of the United States, and having first been duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Mr. Price: What is your address?

Mr. Brancato: Just give your name, that is all for the present.

Mr. Price: Oh, I submit that I am entitled to know his name and address.

Mr. Brancato: If the Court please, we are going to have a little talk about that point.

The Court: Objection overruled. The defendant is not entitled to know at this time the witness's address.

Mr. Brancato: Your Honor ruled on that?

Mr. Price: This man is sworn and I am entitled to hear anything that he says. I did not hear what he said. I want to hear it.

The Clerk: He just gave his name.

[fol. 335] By Mr. Brancato:

Q. Mr. Dispenza, do you know the defendant Alba?

A. Yes, sir.

Mr. Price: Now, please, I want to hear what you say.

The Court: Speak out loud, please.

A. I do.

By Mr. Brancato:

Q. Have you seen the other four defendants before today?

A. Yes, sir.

Q. Do you know Patsy Napolitano?

A. Yes, sir.

Q. On January 14th, Saturday, of this year, did you and Patsy Napolitano go to 138 Union Street?

A. Yes, sir.

Q. I show you a photograph, Defendant's Exhibit A in evidence and ask you if that resembles the house number 138 Union Street, Brooklyn?

A. Yes, sir.

Q. What floor did you go to at 138 Union Street?

A. The ground floor.

Q. About what time was it that you got there?

A. About 2 P. M.

Q. You say Napolitano was with you?

A. Yes.

Q. As you entered the premises, the ground floor, at 138 Union Street, whom did you see there?

A. Mr. Alba.

Q. That is the defendant on trial?

A. The defendant Alba.

Q. Anybody else in there besides Alba?

A. And his wife.

Q. At the time that you went in there did you have a talk with him?

A. Yes, sir.

Q. Tell this Court and Jury what talk you had with Alba at that time, Saturday, about two o'clock.

[fol. 336] Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial.

Mr. Kesselman: On behalf of the defendants whom I represent, I object to it upon the ground that it is incompetent, irrelevant and immaterial.

The Court: It will be only — received as against Alba, unless the Court holds—

Mr. Kesselman: It will be subject to my objection.

The Court (continuing): Holds that there is prima facie evidence offered by the Government that a conspiracy has been established involving other defendants.

A. First when I went in I introduced myself to him; then I introduced Napolitano.

Mr. Price: I move to strike out the answer on the ground that it is a conclusion.

The Court: Motion granted. You will have to state what you said. Use your own words, as nearly as you can recall.

4 A. I told him I was sent in by a fruit man right on the corner.

By Mr. Brancato:

Q. Did you give the fruit man's name?

A. No, sir; I just told him he lives on the corner; he knew him well.

Q. A fruit man around the corner?

A. Right on the corner, the same block. He told me he was all right. So after we kept on talking and he asked me—he asked me what kind of stuff I wanted.

Mr. Price: Instruct him to talk louder, if the Court please.
[fol. 337] The Court: Yes, speak louder, so that we can all understand.

A. (Continuing:) He asked me what kind of stuff I wanted. I told—I turned around and asked Patsy what kind did he want. He told me—he told him he wanted ten ounces of cocaine. Alba turned around and told him that they do not sell it by ten ounces; that they will have to take more, have to take at least two kilos of it.

By Mr. Brancato:

Q. Tell us what other conversation was had between them, if anything?

A. Patsy told him, he said, "All right, let me have samples for the coke." He said, "No, come back and I will let you know." Alba insisted upon getting a deposit of \$100 in order to give him the samples. Then he came down to \$20. Patsy refused and he came down to \$10. Patsy refused. He told him to come back there at seven o'clock at night, that he would have the samples there. So we went back.

Q. Did you go back at seven o'clock or about seven o'clock?

A. Yes, sir.

Q. With Patsy?

A. Yes, sir.

Q. To the same house?

A. To the same house.

Q. Did you see the defendant at seven o'clock?

A. I saw Alba again.

Q. Did you have any talk then?

A. Yes, sir.

Q. What was the talk about?

A. He told me that he had his partner waiting there——

Mr. Price: Of course this is all over the same objection, subject to the same objection and the same ruling, subject to our motion to strike out?

The Court: Yes.

[fol. 338] By Mr. Brancato:

Q. What was said?

A. He said he had his partner waiting there until seven o'clock. We got back there a little after seven o'clock. His partner was hungry and he went home to eat. He said, "Wait a few minutes and he will be right over."

Q. What did you do?

A. We waited for him.

Q. When you say "We waited" whom do you mean?

A. Patsy and I.

Q. What did Alba do?

A. Alba kept on talking to us; told us to wait a few minutes, that the defendant Centorino, partner, would be back.

Mr. Price: Won't you please talk louder?

The Court: Yes, speak louder.

By Mr. Brancato:

Q. Centorino. Did you see him that night, Centorino?

A. Yes, sir; I did.

Q. Where?

A. In Alba's home at 138 Union Street.

Q. How long after was it that Centorino came into Alba's home from the time you got there?

A. About twenty minutes.

Q. Did you have a talk with Centorino?

A. Yes, sir.

Q. Just tell us what the conversation was between you and Centorino, Alba and Patsy Napolitano?

A. Patsy Napolitano asked Alba if he could have ten ounces that same night. He told him "No, we do not sell it by ten ounces, we sell it by the kilo, the lowest you will have to take two kilos." So they insisted upon taking two kilos or they would not sell.

[fol. 339] Mr. Price: I move to strike that out on the ground that it is a conclusion.

Mr. Brancato: Strike it out.

By Mr. Brancato:

Q. What did they say?

A. They told us we would have to take two kilos. Patsy told them all right, to let him have samples. Alba took out the samples——

Q. Alba?

A. Yes. He gave the same to Centorino and Centorino gave it to Patsy.

By the Court:

Q. Whom do you mean by "Patsy?"

A. Patsy Napolitano.

By Mr. Brancato:

Q. Was there any questions had as to the price or as to when to return for the two kilos?

A. Yes, he asked \$19 for the cocaine.

Q. Who did?

A. Alba. \$19.50 for the heroin.

Q. What else transpired?

A. He spoke about some trouble that he had——

Mr. Price: I move that that be stricken out.

Mr. Brancato: I consent.

The Court: Stricken out.

By Mr. Brancato:

Q. Do not tell us anything in the way of previous trouble; just tell us what conversation that took place about the sale of narcotics in this particular case? Was there anything said as to when you were to come back?

A. Yes, sir; told us to come back Monday night after seven o'clock, on the 16th.

[fol. 340] Q. For what purpose?

Mr. Price: Oh, I move to strike that out; I object to that question.
Mr. Brancato: I withdraw the question.

By Mr. Brancato:

Q. What did he say when he said "Come back?"

A. He said he would have the coke, the heroin, in his home on Monday night at seven o'clock; that we were to go there and buy it.

Q. Centorino was present at the time?

A. Yes, sir.

Q. Centorino participated in the conversation?

A. Yes, sir.

Mr. Price: I move to strike out the answer on the ground that it calls for a conclusion. If he wants to state anything that Centorino said, I have no objection.

The Court: Let that be done. Motion granted.

By Mr. Brancato:

Q. Did Centorino say anything during this conversation?

A. He called me in the next room and asked me if he was all right.

Mr. Wackerman: Just a minute. I object to that on behalf of the defendant Alba.

The Court: That will be only received against Centorino, unless the Court holds that a conspiracy was in existence, involving all of the defendants on the date in question; that there is evidence tending to show that a conspiracy existed on that day.

[fol. 341] By Mr. Brancato:

Q. What did he say?

A. He told me—asked if he was all right, if it was all right to sell it to Patsy Napolitano, so I told him "Yes." He said, "Do you know him well?" I said, "Yes." He said, "You know we will have to get in something for you." I said, "All right, go ahead."

Q. Was there anything else said among you four men besides the conversation that you told us about?

A. That was all; I told you about, Monday night.

Q. You say that Centorino gave Patsy two samples?

A. Yes, sir.

Q. Did you go out together with Patsy after you left?

A. Yes, sir, we went out together.

Q. Whom did you meet, if anybody, after you left?

A. I met Manning, Ray, Mellon, Pacetta, four other men outside.

Q. Narcotic Agents?

A. Yes, sir.

Q. Did Patsy give the samples over to anybody?

A. Yes, sir.

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and move to strike out the answer.

The Court: Objection overruled. Motion denied.

Mr. Price: Exception.

By Mr. Brancato:

Q. Did you place any initials or any name on the samples yourself?

A. I don't remember.

Q. Now, you went there Monday night, did you?

A. Yes, sir.

Q. January 16th?

A. January 16th.

Q. At about what time did you get there?

A. At about eight o'clock.

[fol. 342] Q. Who was with you as far as you can remember; tell us the names of all the persons who were at 128 Union Street on January 16th, Monday night, about eight o'clock?

A. Patsy Napolitano, McCormick, Ray, Mellon—

Q. When you say "Ray" do you mean the first man there, Ray Connolly?

A. Yes, sir. Moog, Pacetta, Mr. Oyler. I don't remember all of their names.

Q. About how many were you altogether?

A. We were about ten or twelve.

Q. How did you get to Union Street that night?

A. We got on a Court Street car and got off at Union Street and walked down.

Q. Walked down from Court Street?

A. To Union Street.

Q. With whom did you walk down?

A. Patsy Napolitano.

Q. Did you walk ahead through to 138, did you?

A. Yes, sir.

Q. When you got up to 138, tell us just what you did?

A. We went in there and we were told we were a little late.

Q. Now, tell us first whom you saw in there?

A. Saw Alba and his wife again alone. Alba told me that his partner was hungry and had to go home to eat.

Mr. Wackerman: On behalf of the defendants represented by me I object to everything taking place at this particular time.

The Court: This will be received only against the defendant making the statement.

Mr. Brancato: I think we have had that ruling, your Honor, in the beginning of the case.

Mr. Wackerman: You do not mind me objecting occasionally, do you?

[fol. 343] Mr. Brancato: No.

Mr. Wackerman: Do I understand at this point that all this evidence is subject to my motion to strike out?

The Court: Yes.

Mr. Wackerman: I do not want to be objecting all the time.

The Court: Yes. All subject to your motion to strike out.

By Mr. Brancato:

Q. You went in, you say, and you saw Alba and his wife? A. Yes, sir.

Q. Just what was said by Alba? A. He told me that we were late; that his partner went home to eat. So he said, "Wait here a few minutes and I will go down and get him."

Q. Did you wait there? A. No, I went out with him.

Q. You went out with Alba? A. Yes, I went down to the corner and bought a cigar and Alba went away.

Q. Where was Patsy at that time? A. Patsy remained in the house.

Q. At 138? A. Yes, sir, with his wife.

Q. Then did you come back? A. I came back.

Q. When you came back did you find anybody in Number 138, Alba's house? A. His wife and Patsy.

Q. What did you do? A. I sat there and waited.

Q. How long did you have to wait before anybody came in? A. About twenty minutes.

Q. Who came in then? A. Centorino.

Q. Centorino did; anybody with him? A. Alba.

Q. Did you have a talk? A. We had a talk and he told me why he wanted us to bring—

[fol. 344] Q. Who told you? A. Centorino.

Q. What did he say? A. He said that they would—would be dangerous to bring the stuff there; to go down to his partner's house and get it somewhere else.

Q. Did he give you the partner's name? A. No, sir.

Q. Did he tell you where the house was? A. No; he just said, "Come on; I will bring you down."

Q. What was said? A. Patsy Napolitano and I refused to go down. We told him we wanted the stuff right in Alba's home, so he says, "All right; wait I will go down and get them," then after about ten minutes, three other defendants came in with him, with Centorino. As soon as they came in the door—

Q. Now, you say that was about ten minutes? A. Ten or fifteen minutes.

Q. After Alba and Centorino asked you about the money or wanted you to go to the partner's house—

Mr. Price: If your Honor please, at this time—

The Court: Be careful not to answer this question, until we have had argument on it. Mr. Price: As long as he has hesitated, may I ask your Honor at this time to let the witness tell in his own way without any suggestion or leading what happened there. That is

my objection. It is a crucial part of the case and I do not want him led.

Mr. Brancato: There is nothing crucial about this part of the case that I can see.

Mr. Wackerman: Do you concede that?

[fol. 345] By Mr. Brancato:

Q. Now, after Alba and Centorino told you to go down with them to their partner's house, just what was it that you or Napolinato said to them? A. The four of us walked out.

Mr. Wackerman: He has testified to that whole transaction.

The Court: Objection overruled.

Mr. Wackerman: Exception.

A. The four of us walked out, Centorino, Alba, Patsy Napolinato and I walked out on the street.

Mr. Brancato: That is a leading question, Mr. Price.

Mr. Price: I do not want any observations. He was wise enough. He left it out before.

A. (Continuing:) The four of us walked out, we argued on the street whether to go down or not. Finally we determined not to go down and Centorino said he would bring them back.

Q. Did you go back to the house? A. Yes, sir.

Q. Who went back with you? A. Alba and Napolinato.

Q. Did you remain in the house? A. Yes, sir.

Q. How long did you remain in the house; as far as you remember, about how long? A. Until they came?

Q. Yes. A. All the time after that.

Q. How long did you remain in the house until somebody came back? A. About fifteen minutes.

Q. Who came back? A. Centorino, with the other defendants.

[fol. 346] Q. By the order three defendants, do you mean—whom do you mean? A. Pace and the two Agnello brothers.

Q. Did you see them enter the house; did you see them entering the house? A. I seen them coming.

Q. Coming into the room? A. Yes, sir.

Q. Where were you seated? A. Right near the window.

Q. Now, I show you Defendant's Exhibit A and ask you to show which window you were seated at in the kitchen? A. The first window near the door.

Q. What letter is it marked? A. "A".

Q. You were seated near the window marked "A" on Defendant's A? A. Yes, sir.

Q. You say that you saw them coming? A. I saw them coming, yes, sir; from the outside.

Q. Did they come together? A. Yes, sir.

Q. From which side of the street was it that they came? A. From the right hand side coming up.

Q. Is that the same side that No. 138 is on? A. Yes, sir.

Q. You say that you saw them entering the house? A. I saw them entering the house.

Q. Then what happened after you saw them entering the house? A. They came in the door; they came in the kitchen and locked the door. Centorino told the defendant Pace and the Agnello that we were the ones that wanted to buy the coke.

Mr. Price: I move to strike that out on the ground that it is a conclusion.

The Court: Is that what he said?

[fol. 347] The Witness: He says that we were the men that wanted to buy the coke and heroin.

The Court: Motion denied.

Mr. Price: He cannot state—we submit that he cannot state that anybody stated right there that they were the men that wanted to buy.

The Court: I understood that this is what the defendant said.

The Witness: What the defendant said; yes, sir.

Mr. Price: He cannot state that; he stated it to Pace.

Mr. Brancato: He said it to Pace, he said.

The Witness: He said it to Pace.

Mr. Wackerman: I object to it on behalf of the other defendant Frank Agnello.

The Court: Objection overruled, subject to a motion to strike out.

Mr. Price: Exception.

Mr. Wackerman: Exception.

By Mr. Brancato:

Q. Did you go into another room?

A. Yes, sir.

Q. What room did you go into, what room? A. The next room.

Q. I show you Defendant's Exhibit A and ask you to tell us from that picture that room it was you went into after you left the kitchen? A. That is supposed to be the parlor room, room "B".

Q. You got into room "B"; who went in with you? A. The five defendants and I and Patsy Napolitano.

Q. Now, tell us in detail now what transpired in this room; what happened there? A. Then the defendant Pace asked us if we were [fol. 348] ready for business; if we had the money, and so I told him "Yes." So he started to take the packages—one of the Agnello started to take the packages and put them on the table—

Q. Who started to take the packages? A. The young Agnello took the packages out of the pocket and handed them over to the big Agnello brother, and he put them on the table. Alba asked for the money. At the same time, Patsy said, "Where is that stuff?" He said, "He has got it with him." He said, "All right," so he gave him the money, a roll of bills—

Q. Then what happened? A. Then the agents came in from the outside.

Q. Did you hear a shot fired? A. Yes, sir.

Q. The agents came in? A. Yes, sir.

Q. After they came in just describe what took place there as well

as you can? A. After they came in they lined them up in the room "B". The big Agnello brother told the young one to say that he was paid \$5.00 to bring the stuff in the house and not be afraid. So one of the agents split them apart so they could not talk to one another.

Q. Was anybody searched? A. Yes, sir.

Q. Was Alba searched? A. Yes, sir; the five of them were searched.

Q. Was Alba searched? A. Yes, sir.

Q. Was anything found on Alba? A. Yes, sir; the money.

Mr. Brancato: Your witness.

Cross-examination by Mr. Price:

Q. Were you born in this country? A. Yes, sir.

Q. Lived in the City of New York all your life? A. Yes, sir.

[fol. 349] Q. Where do you live now?

Mr. Brancato: One moment. I object to the question as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Brancato: If the Court please, now, I have a special reason.

Mr. Price: I do not wish to let Mr. Brancato make any such statement in the presence of this jury.

Mr. Brancato: Don't get excited.

The Court: Will you come up, gentlemen, and I will hear arguments?

(Conference was held between the Court and Counsel.)

The Court: Objection overruled.

(The last question was repeated by the reporter.)

A. 198 Macdougall Street.

Q. That is in the Borough of Manhattan? A. In the Borough of Brooklyn.

Q. Whom do you live there with? A. My wife.

Q. How long have you been married? A. Seven years.

Q. Where were you married? A. Brooklyn.

Q. By whom were you married? A. By whom was I married?

Q. Yes. A. The City Hall.

Q. Married by an Alderman? A. I don't know who he is. He is in the City Hall.

Q. You were not married in Church or by a priest? A. In Church and by a priest.

Q. What Church were you married in? A. The Sacred Heart.

[fol. 350] Q. Where is that? A. Degraw and Hicks Street, Brooklyn.

Q. Do you remember the name of the priest who married you? A. Yes, sir.

Q. What is his name?

A. Father Joseph.

Q. Have you lived in Brooklyn all your life?

A. Yes, sir.

Q. Born in Brooklyn? A. Yes, sir.

Q. And this is your right name? A. Yes, sir.

Q. This is the name that you procured your marriage license under? A. Yes, sir.

Q. Is it the name under which you were married? A. Yes, sir.

Q. What kind of a house is No. 198 Macdougall Street, Brooklyn? A. An apartment house.

Q. How many families? A. Six families.

Q. That is up toward the East New York Section? A. Yes, sir.

Q. Is that near the school? A. Yes, sir.

Q. You live there under that name and at that address? A. Yes, sir.

Q. In what apartment do you live in? A. The top apartment.

Q. Is it three stories, two families on each floor? A. Two families on each floor.

Q. As you go up the stairs, which side do you live on, the right or left? A. The right.

Q. How long have you lived there?

The Court: Now, let us get down to this case. You know enough, it seems to the Court, about the witness's private affairs, so far as that line is concerned.

Mr. Price: We are pressing the question.

Mr. Brancato: I object to it.

The Court: The Court excludes the question.

Mr. Price: I except.

[fol. 351] By Mr. Price:

Q. How old are you?

A. Twenty-three.

Q. Did you go to school in this country?

A. Yes, sir.

Q. How old were you when you left school?

A. Fourteen.

Q. Did you go to work then?

A. Yes, sir.

Q. Whom did you work for?

A. The Coastwise Lumber Company.

Q. How long did you work for the Coastwise Lumber Company?

A. I worked for all different firms down there; whenever we were hired, we went to work.

Q. Will you answer my question; how long did you work for the Coastwise Lumber Company?

A. Worked with them off and on; I cannot remember just how long.

Q. Was it more off than on?

Mr. Brancato: I object to that witticism of counsel.

The Court: Objection overruled.

By Mr. Price:

Q. Was it?

A. Five firms, whoever comes down and asks us to go to work, we go to work.

Q. What work did you do for the Coastwise Lumber Company?

A. Ship carpenter.

Q. Who was your immediate superior?

A. The Coastwise, "Bob" Stevens.

Q. Where can he be found?

Mr. Brancato: I object to that; how does this man know where he can be found?

The Court: Objection overruled. If you know.

A. I don't know where he can be found.

[fol. 352] By Mr. Price:

Q. Where did you work for him, at what place?

A. At the foot of Clinton Street, Brooklyn.

Q. How many years did you work for him?

A. I did not work for him years; I worked for him off and on.

Q. Occasionally; how many years on and off?

A. I worked for five companies off and on two years.

Q. During those two years was Mr. Stevens your immediate superior?

A. No, not all of the time.

Q. Who else was over you?

A. The Mutual Lumber Company.

Q. Who was your foreman?

A. Joe McCabe.

Q. Now, you worked for those five concerns for two years; is that right?

A. Yes, sir.

Q. Who else did you work for?

A. The Mean Lumber Company, the Rudolph Lumber Company.

Q. Where is his place of business?

A. Mean is on Sedgwick Street. Rudolph is at the foot of Sackett Street.

Q. Who else did you work for?

A. The Waterfront Lumber Company.

Q. Where is its place of business?

A. The foot of Court Street.

Q. Who else did you work for?

A. That is all.

Q. You are familiar with this section down around Union Street, aren't you?

A. Yes, sir.

Q. You have been there many, many times, haven't you?

A. Well, on business, yes.

Q. You are familiar with Columbia Street?

A. Yes, sir.

Q. Hicks Street?

A. Yes, sir.

Q. Court Street?

A. Yes, sir.

[fol. 353] Q. All of the Italian section down there, aren't you?

A. Yes, sir.

Q. How many times have you been working for Mr. Oyler?

A. About three months.

Q. How many times, I asked you?

A. I worked for him for three months.

Q. How many times did you work for him?

A. How many different cases, do you mean?

Q. No, how many times?

The Court: How many days?

A. I don't remember the days. I worked for him for three months.

Q. When was the first time that you ever went to work for Mr. Oyler?

A. About three months ago. I don't remember the date.

Q. How many days did you work for him at that time?

A. I don't remember.

Q. Can't you give us some idea?

A. I don't remember.

Q. You worked for him a second time, didn't you; didn't you?

A. I worked for him three months; that is all I know.

By the Court:

Q. Don't you know whether you worked on more than one case?

A. No, just on this one case.

Q. This is the only case that you have worked for him on?

A. Yes, sir.

By Mr. Price:

Q. Have you been working on this case for Mr. Oyler for three months; yes or no?

A. No.

Q. So as a matter of fact you have not been working for Mr. Oyler for three months, have you?

A. Three months, yes, sir.

[fol. 354] Q. You just told his Honor that you have been working for Mr. Oyler for three months, didn't you?

A. Yes, sir.

Q. You just said this was the only case that you were working on, didn't you?

A. Yes, sir.

Q. So that if you worked for Mr. Oyler, you were doing something else for him, weren't you?

A. That is three months, ain't it?

Q. You don't mean that you were in his employ for three months; did you mean that you worked for him three months ago? Is that it?

A. I was with him for three months.

Q. Tell me the three months that you were employed by Mr. Oyler; name the months?

A. I don't just remember the months. I know I worked three months for him.

Q. Did you work for him in December?

A. No, beginning in January.

Q. Did you work in November?

A. No, sir.

Q. Was it after December that you worked for him?

A. Beginning in January.

Q. You began in January; did you work the entire month of January?

A. Yes, sir.

Q. That is, the entire month?

A. Yes, sir.

Q. Did you work the month of February?

A. No, sir.

Q. Did you work the month of March?

A. No, sir.

Q. Did you work—that is all that there is in this year, isn't it?

A. That is all.

Q. Did you work any other months in last year?

A. No, sir.

Q. So that, as a matter of fact, you only worked one month for Mr. Oyler, didn't you?

A. That is three months ago.

[fol. 355] Q. That is in the month of January?

A. In the month of January.

Q. Yes. So that when I asked you if it was three months ago that you went to work for Mr. Oyler, you said, "No, three months" didn't you?

A. It is three months ago I worked for Mr. Oyler.

Q. Didn't you testify here a least four times that you worked for Mr. Oyler for three months?

A. I meant three months ago.

Q. Didn't you say that?

A. Yes.

Q. But you did not mean it? You do not mean it now?

A. No, I worked three months ago.

Q. You worked three months ago, beginning the month of January you worked the whole month of January?

A. That is it.

Q. This was the only case that you worked on?

A. Yes, sir.

Q. Now, when was the first time that you came to Court in this case?

A. When was the first time I came to Court on this case?

Q. Yes?

A. This morning.

Q. From the time that the defendants were arrested up to the present time, you have never been in Court, have you?

A. No, sir.

Q. You have not spoken to anybody about this case?

A. No, sir, except with Manning the night before, last night I met Manning on the corner of Union Street and Court Street and he asked me to come down.

Q. No, I did not ask you what he said; you spoke to Manning the night before last?

A. Yes, sir.

Q. Last night was Tuesday; you spoke to Manning Monday?

A. Monday.

Q. Is that correct?

A. Yes, sir.

[fol. 356] Q. Did you meet Manning there by appointment?

A. No, sir.

Q. You just happened to meet him down there?

A. No, I hang out there on the corner.

Q. You hang out on the corner of Court and Union Streets?

A. Yes.

Q. You happened to meet Manning there by chance?

A. Well——

Q. Did you ever give Manning your correct name?

A. No, sir.

Q. Did you tell him where you lived?

A. No, sir.

Q. Did you ever give Mr. Oyler your correct name?

A. I don't remember.

Q. Did you tell him where you lived?

A. I don't remember.

Q. Is that your best answer?

A. Yes, sir.

Q. Oyler was your boss, wasn't he?

A. Sir?

Q. Oyler was your boss, wasn't he?

A. Yes.

Q. How long did you know Pacetta?

A. I know Pacetta about nine months.

Q. Did you ever give Pacetta your right name and address?

A. No, sir; he has always known me by "Nunzio."

Q. Everybody connected with this case only knows you by the name of "Nunzio", is that right?

A. That is right.

Q. You are sure that you met Mr. Manning on last Monday evening, the 13th of March?

A. Yes, sir.

Q. At the corner of Court and Union Street?

A. Yes, sir.

Q. And you spoke to him about this case?

A. Yes, sir.

Q. Outside of Mr. Manning, did you speak to anybody else about the case?

A. No, sir.

[fol. 357] Q. Did you see any of the other agents who are in this case before you took the witness stand to testify?

A. This morning, no, sir.

Q. I did not ask you anything about this morning?

A. You were talking about this morning.

Q. At any other time did you see anybody?

A. I have seen them, yes.

Q. Did you talk to them?

A. No, sir.

Q. Did you ask them when the case was coming on for trial?

A. No, sir.

Q. You did not testify before the Grand Jury in this case, did you?

A. No, sir.

Q. Well, you know McCormick, sitting here, don't you?

A. Yes, sir.

Q. You were not out in the hall talking to McCormick?

A. No, sir.

Q. You never said a word to McCormick today?

A. No, sir.

Q. McCormick did not walk from one room to another outside today?

A. No, sir.

Q. And did not speak to you, did he?

A. No, sir.

Q. You have been in the United States Marshal's office, haven't you?

A. Yes, sir.

Q. And there were two rooms there?

A. Yes, sir.

Q. McCormick came over and took you from one room to the other?

A. No, sir.

Q. Didn't you go from one room to another in the Marshal's office?

A. No, sir.

Q. Did not McCormick talk to you there?

A. No, sir.

Q. Did you see Mr. Connolly there?

A. Who is Mr. Connolly?

Q. This gentleman (indicating).

A. No, sir.

[fol. 358] Q. Did you see any of the agents sitting here in the room at all this morning or speak one word to them?

A. No, sir, I did not speak one word to them.

Q. Did you see Mr. Oyler last night?

A. No, sir.

Q. Did you see Mr. Oyler this morning?

A. No, sir.

Q. Did you speak to Mr. Oyler?

A. No, sir.

Q. Did you speak to Mr. Brancato before he put you on the witness stand?

A. No, sir.

Q. You did not say a word to him?

A. No, sir.

Q. Did you ever go to Mr. Brancato's office?

A. No, sir.

Q. To tell him what you knew about this case?

A. No, sir.

Q. You never told a single solitary soul what you were going to testify to here in this case until you took the witness stand?

A. No, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, let us get down to Monday night, the 16th of January; you understand what I want now?

A. Yes, sir.

Q. I will withdraw that. Let us go back to the 14th; that is what I want to first interrogate you on. Had you ever seen Alba before the night of the 14th of January?

A. No, sir.

Q. Did you know where his pastry shop was before that?

A. No, sir.

Q. Don't you know as a matter of fact that you knew Alba for a year and a half?

A. No, sir.

Q. Don't you know that you have been in Alba's pastry shop for a year and a half on and off?

A. No, sir.

+ [fol. 359] Q. Don't you know that you have been persistently and constantly calling at Alba's home trying to get Alba to sell drugs?

A. No, sir.

Q. You never went into Alba's home before the 14th?

A. No, sir.

Q. You were not there on the 13th?

A. No, sir.

Q. You did not see Alba on the 13th?

A. No, sir.

Q. Didn't you tell him that you were going to get him some stuff?

A. No, sir.

Q. Was not Centorino there at that time?

A. No, sir.

Q. On the 14th you went to Alba's home with Patsy?

A. On the 14th, yes, sir.

Q. When you went in there—

Mr. Brancato: At this time, in view of the fact that all of the answers have been "No, sir." I ask your Honor to charge, to instruct the jury now that the only thing in evidence before them now is the "No, sir" of the witness, and not the questions of counsel.

The Court: Certainly, it is only the testimony of the witness.

Mr. Brancato: An atmosphere may be created.

Mr. Price: They do not have to believe him, you know; that is up to the jury whether they believe him or not.

Mr. Brancato: But you have to prove something affirmatively.

Mr. Price: I will prove that; don't you worry about what I will prove.

Mr. Brancato: You have a good gang of men here.

Mr. Price: I object, if your Honor please, to Mr. Brancato's remarks.

[fol. 360] The Court: You are inviting this, counsel.

Mr. Price: No.

The Court: You are continuing the colloquy.

Mr. Price: I object to the statement that I have "a good gang of men here" to prove anything, and I ask your Honor to tell the jury to disregard it.

The Court: The Court instructs the jury to that effect.

By Mr. Price:

Q. You first went to the premises 138 Union Street on the 14th you say?

A. Yes, sir.

Q. You got there about two o'clock?

A. Yes, sir.

Q. At that time Alba was in the house?

A. Yes, sir.

Q. You had never, according to your testimony, seen Alba before that day?

A. No, sir.

Q. You had never spoken to Alba before that day?

A. No, sir.

Q. You had not seen Centorino before that day?

A. No, sir.

Q. And you say that you walked in Alba's house, is that right?

A. Yes, sir.

Q. Was the door open?

A. No, I knocked at the door and he opened it.

Q. Which door?

A. The kitchen door.

Q. The door leading from the hallway into the kitchen?

A. The door leading from the hallway into the kitchen.

Q. It is the outside door shown on defendant's Exhibit A; that was open, wasn't it?

A. Yes, sir.

Q. I mean by "open" it was not locked?

A. It was open.

[fol. 361] By the Court:

Q. You mean the door was standing open, but was closed or unlocked?

A. Closed but unlocked. The door was closed but unlocked.

By Mr. Price:

Q. So you just opened the door and walked up to the kitchen door and knocked at the kitchen door and the door was opened by the old man Alba?

A. Yes, sir.

Q. There is no mistake about that, is there?

A. No, sir.

Q. Did he tell you, "Come right in?"

A. "Come right in."

Q. And you and Patsy went in?

A. Yes, sir.

Q. When you got in there you saw the old lady?

A. Yes, sir.

Q. And Alba was there?

A. Yes, sir.

Q. Then you had a talk with Alba?

A. Yes, sir.

Q. Is that right? That was two o'clock in the afternoon

A. I introduced myself to him.

Q. You said that you told him your name?

A. I just told him "I was sent here by the fruit man."

Q. Did you tell him that your name was "Andy"?

A. No, I did not tell him.

Q. You never told him your name at all?

A. No, sir.

Q. Never told where you lived?

A. No, sir.

Q. Never told what your business was or who you were?

A. No, sir.

Q. You just told him you were sent there by a fruit man from around the corner?

A. Over on the corner.

[fol. 362] Q. Did he ask you the name of the fruit man?

A. No, he said he was all right.

Q. He said to you, "All right" as soon as you said, "I am sent here from the fruit man on the corner" he said to you, "You are all right"?

A. He did not say, "You are all right."

Q. Didn't you just tell us, these twelve men, that is what he said?

A. No, he did not say "You are all right." He said, "All right," that is all.

Q. He said, "All right," is that it?

A. Yes, sir.

Q. Then you turned to him and you said, "I want you to meet my friend Patsy?"

A. No, "Frank."

Q. You introduced him as——

A. As Frank.

Q. Did you tell him—what other name?

A. No other name.

Q. He was not——

A. No other name.

Q. After you introduced him, Alba went out, didn't he?

A. No, sir.

Q. Did he stay there all the while?

A. Yes, sir, he did.

Q. Did Centorino come in?

A. No, sir.

Q. Well, was Centorino there at all that afternoon?

A. Not at two o'clock in the afternoon.

Q. Centorino did not appear on the scene until the evening, is that right?

A. Yes, sir.

Q. You had a conversation which you related, and you came back around seven in the evening with Patsy?

A. Yes, sir.

Q. At that time you found Alba there; and you found Mrs. Alba there?

A. Yes.

Q. Did Centorino come later on?

A. I found Alba——

Q. Won't you answer my question?

A. Centorino came later on, about fifteen or twenty minutes after.
[fol. 363] Q. Well, you three were sitting there talking?

A. Well, four of us were sitting there talking.

Q. I mean Centorino came in while you and Patsy and Alba were talking?

A. And his wife.

Q. Is that right?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Q. Then you have had this conversation that you have told us about?

A. Yes, sir.

Q. Did Alba introduce you to Centorino?

A. No, sir.

Q. Then Centorino just came in?

A. Just came in and he said, "Here is some people who want some cocaine."

Q. Who said that?

A. Alba.

Q. What did Centorino say?

A. He said, "All right."

- Q. Did Alba tell you—tell Centorino who you were?
 A. No, sir.
- Q. Did Alba tell Centorino where you came from?
 A. No, sir.
- Q. Did he introduce you to Centorino?
 A. No, sir.
- Q. Did he introduce Patsy to Centorino?
 A. No, sir.
- Q. He just said, "Here is some man that wanted to buy some coke"? That was at seven o'clock at night?
 A. Yes, sir.
- Q. Centorino did not ask you who you were?
 A. No, sir.
- Q. He did not ask you where you came from?
 A. No, sir.
- Q. Nothing like that took place at all?
 A. No, sir, nothing.
- Q. Don't you know as a matter of fact that you were in Alba's house and met Alba and Centorino on the 13th and arranged to give him this cocaine?
 A. No, sir.
- + [fol. 364] Q. Don't you know that you met Centorino the next day and gave him this cocaine?
 A. No, sir.
- + Q. Who gave the samples?
 A. Alba handed them over to Centorino and Centorino gave them to Patsy.
- Q. Did Alba say anything to Centorino when he gave Centorino the samples?
 A. No, sir.
- Q. Where did he get the samples from?
 A. In an envelope.
- Q. Where did he get the envelope from?
 A. I don't remember.
- Q. You were watching him very closely?
 A. I don't remember if he got it out of his coat pocket, what he had on or out of the one hanging up.
- Q. You were there right at that time for the purpose of getting evidence?
 A. I don't remember.
- Q. Weren't you?
 A. Yes, sir.
- Q. You were there to trap the defendants and have them arrested, weren't you?
- Mr. Brancato: I object to that.
 The Court: Objection overruled.
- By Mr. Price:
- Q. Weren't you?
 A. I was not there to trap them.
- +

Q. Well, when you were there at seven o'clock that night, you went there for the purpose of arresting—

+ A. Of getting samples.

Q. Of getting samples?

A. Yes, sir.

Q. You did not go there to buy anything Saturday night?

A. Well, I went there to buy, but they would not sell ten ounces.

Q. You did go there to buy?

A. Yes, sir.

[fol. 365] Q. You were there to arrest these defendants if you could, weren't you?

A. Not I, the agents were.

Q. You wanted to furnish the evidence so that the agents could lock them up, didn't you?

A. Yes, sir.

Q. You were there for that purpose on Saturday night weren't you?

A. Yes, sir.

Q. And your side partner—by the way, is he your partner, Mr. Patsy?

A. Yes, sir.

Q. He is your partner?

A. Yes, sir.

Q. He is not a friend of yours?

A. A friend of mine.

Q. How long have you known him?

A. About a year.

Q. Did you know him before this case?

A. Yes, sir.

Q. Did you talk to him before the case?

A. Before the 14th?

Q. Yes?

A. Yes, sir.

Q. Did you ever go to his home?

A. No, sir.

Q. Did he ever go to your home?

A. No, sir, he did not.

Q. How many times did you meet him during this year?

A. Oh, plenty of times.

Q. That means nothing—

A. I don't remember just how many times.

Q. Did you meet him one hundred times?

A. No, less than that.

Q. Did you meet him a couple of times a week?

A. About—

Q. Did he hang out on the corner of Court Street with you?

A. I met him in the restaurant.

Q. Have you ever been convicted of a crime?

A. No, sir.

[fol. 366] Q. What restaurant did you use to meet Pasquale in?

+ A. Cafiero's, on President Street and Columbia.

Q. How often did you meet him there, every week, or a couple of times a week?

A. Sometimes every week, sometimes a couple of times a week; sometimes every two weeks.

Q. So you knew him very well?

A. Yes, I knew him very well.

Q. For over a year before this case?

A. For about a year.

Q. About a year before the case started; is that right?

A. Yes, sir.

Q. Did he know your name?

A. No, he knew my name as "Nunzio."

Q. Did he know where you lived?

A. No, sir.

Q. Did you ever tell him?

A. No, sir.

Q. You knew his name, didn't you?

A. I knew him as "Patsy."

Q. Didn't you know his last name?

A. No, sir.

Q. And you had been hanging around with him in the restaurant for once or twice over a year and you never inquired his last name?

A. No, sir.

Q. You never inquired what his business was or anything else, did you?

A. Yes, I knew what his business was.

Q. What is his business?

A. Investigator.

+ Q. He is a stool pigeon like yourself, isn't he?

Mr. Brancato: I object to that remark of counsel, if the Court please, a "stool pigeon."

The Court: Objection overruled.

By Mr. Price:

Q. Isn't he?

A. No, sir.

[fol. 367] Q. You do not call yourself a stool pigeon, do you?

A. No.

Q. You call yourself an informer?

A. Yes, sir.

+ Q. You are an informer?

A. Yes, sir.

Q. You draw a distinction between the words "informer" and "stool pigeon" do you?

A. Yes, sir; I do.

Q. At seven o'clock, when you got there at seven o'clock on Saturday night, you went in and Alba was there with his wife?

A. Yes, sir.

Q. Patsy and you went in and sat down, didn't you?

A. Yes, sir.

Q. After a while Centorino came in?

A. Yes, sir.

Q. Is that correct?

A. No. He went down to get him on Monday night.

Q. I am talking about Saturday night?

A. Centorino came in.

Q. While you and Patsy sat there talking with Alba?

A. Yes, sir; that is right.

Q. Is that correct?

A. Yes, sir.

Q. From the time that you first went in there on Saturday night up to the time that Centorino came in, you were all seated around talking to Alba, weren't you, you and Patsy?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. During all that time that you were there you never left until after Centorino had come?

A. That is it.

Q. You are sure about that?

A. Yes, sir.

Q. You did not testify in your direct examination that you went out and bought Alba a cigar, did you?

A. No, sir, now?

Q. No, on Saturday night; on Saturday night—didn't you testify on your direct examination that on Saturday night you and Alba went out?

A. No, that was Monday night that I went out to buy a cigar.

[fol. 368] Q. That was Monday night? You did not testify that was Saturday night, did you?

A. No.

Mr. Price: My cross examination will consume some time. Does your Honor wish a recess?

The Court: We will take a recess of the trial until three o'clock, on account of the sickness of Juror No. 12.

At this point a recess was taken until 3 o'clock P. M.

After Recess

NUNZIO DISPENZA resumes the stand for further cross-examination.

By Mr. Price (continued):

Q. I understand on your direct examination that you testified that when you went to Alba's house for the first time on Saturday afternoon at 2 o'clock that you did not introduce Pasquale by name, is that correct?

A. I introduced him by "Frank."

Q. You said, "This is Frank"?

A. Just as "Frank," yes.

Q. Is that right?

A. Yes.

Q. You did not say, "This is a friend of mine," did you?

A. "This is a friend of mine, Frank," yes, sir.

Q. Are those the only words that you used in introducing Pasquale Napolitano to the defendant Alba?

A. I introduced him as "Frank."

Q. Listen to my question and answer it yes or no. Are those the only words that you used in introducing Napolitano to Alba "This is my friend, Frank?"

A. That is all.

[fol. 369] Q. That is all, is it?

A. Yes, sir.

Q. You did not say to Alba, "That is a friend of mine, this is Pasquale Napolitano," did you?

A. No, sir.

Q. So that would — you change your testimony if you knew that Pasquale Napolitano testified here in this case that he said that you introduced him to Alba and said, "This is a friend of mine, Pasquale Napolitano?"

A. I would not change my testimony.

Q. You would still say you were correct?

A. Yes, sir.

Q. On Saturday night from the time that you got into Alba's house, up to the time that you left, Alba did not go out, did he?

A. Saturday night, no.

Q. You are positive of that too?

A. Yes, sir.

Q. If Pasquale testified here on his direct and cross-examination that Alba went out on Saturday night, went to Centorino's home and got Centorino and came back with him, you would still say you were right, would you?

A. I am right, yes.

Q. You are right?

A. Yes, sir.

Q. There was no conversation on Saturday night about Alba's friend leaving 138 Union Street, was there?

A. No.

Q. Alba did not say to you and Pasquale, "If you were here five minutes sooner you would have found my friend here," did he?

A. He did, yes.

Q. Did he say that his friend had been there and had gone away?

A. Yes, sir.

Q. So that when you just told me a minute ago that there was no conversation about Alba's friend having been there before you got there, that was not the fact, was it?

[fol. 370] Mr. Brancato: I object to the fact that that was the question put by counsel to the witness. He has changed his question somewhat.

Mr. Price: I submit it is proper cross examination.

Mr. Brancato: I object to it; it is not a proper question.

The Court: Objection overruled.

A. I got there and Alba——

By Mr. Price:

Q. No, answer my question, yes or no; I asked you——

The Court: Can you answer the question yes or no?

The Witness: Ask me the question what it is and I will answer.

(The question was repeated by the reporter.)

A. I did not get that right.

(The question was again repeated by the reporter.)

A. He did tell me that he was there.

By Mr. Price:

Q. But Alba did not go out on Saturday night, you said?

A. He did not.

Q. He did not?

A. No.

Q. He stayed in his house on Saturday night, at 138 Union Street from the very moment that you and Pasquale came in, right up to the time that you got your samples and went away, having made the appointment for Monday night?

A. Yes.

[fol. 371] Q. No doubt about that at all?

A. No.

Q. There is no doubt about that at all?

A. No, sir, there is not.

Q. You are absolutely positive of that, are you?

A. Yes, sir.

Q. So that if Pasquale testified—I refer to Pasquale Napolitano—testified that Alba said to him, “I will go out and get my friend,” and then left the premises 138 Union Street and came back in seven or ten minutes with Centorino, you would say that was not the fact, wouldn’t you?

A. Yes, sir.

Q. You say you are right and Pasquale is wrong?

A. Yes, sir.

Q. When you were shown the samples by Alba, Alba told you how much money he wanted for cocaine; that is, nineteen dollars an ounce, is that right?

A. Yes, sir, nineteen dollars.

Q. You did not question that, did you?

A. No, sir, I did not.

Q. Pasquale did not question it?

A. No, he wanted to get it cheaper.

Q. Then you did question it?

A. Pasquale did, not I.

Q. Pasquale was the man who was supposed to be the purchaser, wasn't he?

A. Yes, sir.

Q. You were only there as his friend to introduce him?

A. Yes, sir.

Q. So Pasquale did question him, didn't he?

A. Yes, sir.

Q. Are you familiar with the neighborhood of 143 Union Street?

A. No, sir.

Q. You are not?

A. No, sir.

Q. Haven't you been down in that neighborhood a number of times?

A. Yes, sir.

Q. You know where it is, don't you?

A. 143?

[fol. 372] Q. Yes.

A. I know it is between Hicks and Columbia, but I don't know the house.

Q. It is on the opposite side of 138, a few doors away, isn't it?

A. I don't know.

Q. Don't you know that?

A. I don't know if it is or not.

Q. You don't? You know 138 where that is, don't you?

A. Yes.

Q. You know where 143 ought to be, don't you?

A. No, sir.

Q. You had not any idea?

A. It might be above or below; I don't know.

Q. But you know it is in the same block on the opposite side of the street, don't you?

A. I know it is on the opposite side of the street.

Q. Isn't the reason that you do not want to tell us about 143 because you know that Alba used to conduct a little cafe, a pastry restaurant there, and you used to visit it?

A. No, sir.

Mr. Brancato: I assume that counsel will prove those statements.
Mr. Price: You can bet I will.

By Mr. Brancato:

Q. Now, during the recess hour, were you out with any of the agents in this case?

A. Yes, sir.

Q. Who were you out with?

A. McCormick, Manning, Moog, Patsy and Ray.

Q. Anybody else?

A. That is all.

Q. You did not talk about this case during the recess?

A. No, sir.

Q. You did not say one word about it?

A. We talked about this case—we went—a gentleman outside called Patsy a "stool pigeon."

Q. I did not ask you what was said, I said, "Did you talk about this case?"

A. No, sir.

[fol. 373] Q. You did not say a word about this case?

A. No, sir.

Mr. Brancato: He is telling you what he said about the case.

Mr. Price: That is not about the case, what somebody else outside said.

By Mr. Price:

Q. Now, on Monday night you said that before Centorino came you went out with Alba?

A. Yes, sir.

Q. Did you see any of the agents around the neighborhood when you went out?

A. I did.

Q. Whom did you see?

A. I saw Manning.

Q. Did you talk to him?

A. No, sir.

Q. Where did you go to?

A. I went out on the corner of Columbia Street and Union Street to buy a cigar.

Q. Did Alba go in with you?

A. No, sir, just stand—Alba went away about his own business.

Q. Did you buy Alba a cigar?

A. No, sir.

Q. Didn't you testify here this morning on part of your direct examination that you bought Alba a cigar?

A. No, sir.

Q. That is, you and Alba left the premises on Monday night together?

A. Yes, sir.

Q. You walked from Number 138 Union Street down to the corner of Union and Columbia Street where you left Alba and Alba went away?

A. Yes, sir.

Q. That was before Centorino came; is that correct?

A. Yes, sir.

Q. You left Patsy in the house when you went down to the cigar store and then you came right back and went in?

A. Yes, sir.

Q. When you came back was the doors open or closed?

A. They were closed but unlocked.

[fol. 374] Q. That is, the outside door was open, was it?

A. Yes, sir.

Q. The door leading from the hall into the kitchen was also unlocked?

A. Unlocked.

Q. The door was closed and you just turned the knob and walked in?

A. Yes, sir.

Q. When you got in there you found your friend Patsy in there?

A. Yes, sir.

Q. You found Alba in there and Mrs. Alba?

A. I did not find Alba in there when I came back.

Q. You found just Patsy?

A. Patsy and his wife.

By the Court:

Q. Patsy and whose wife?

A. Alba's wife.

By Mr. Price:

Q. Now, on Monday night did you have any conversation with Alba about Centorino having been there and gone away?

A. Yes, he told me he was there.

Q. "Yes" is an answer; I am asking you——

A. Yes.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. Then after that Alba went out with you?

A. Yes, sir, he did.

Q. Now, after you returned to the house, how long was it before Centorino and Alba came back?

A. About twenty minutes.

Q. Up to that time you had not seen any of the other defendants?

A. No, sir.

Q. You are positive of that?

A. Yes, sir.

Q. You had no conversation, is that correct?

A. Yes, sir.

Q. With any of the other defendants?

A. Yes, sir.

[fol. 375] Q. Your arrangement to buy this cocaine had been agreed upon, hadn't it?

A. Yes, sir.

Q. That is, you were to buy a kilo of cocaine from Centorino, is that right?

A. Patsy was supposed to buy it.

Mr. Brancato: Did you get that?

Mr. Price: I heard his answer.

By Mr. Price:

Q. And from Alba, is that right?

A. Yes.

Q. You understand when I say "you" that I mean you and Patsy, don't you?

A. Yes, sir.

Q. You have already told me that you did not intend to buy any, that Patsy did?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. So if I say "You" you know what I mean, don't you?

A. Yes.

Mr. Price: So if he understands it I think you ought to.

Mr. Brancato: He can handle himself, don't you forget it.

By Mr. Price:

Q. So that you said a minute ago your arrangement to buy cocaine was complete when you came there Monday night; is that right?

A. Yes, sir.

Q. And you had not seen any of the other defendants?

A. I did not see any of them.

Q. When the other defendants came there, as I understand it, you were in the kitchen, were you?

A. No, sir, I was not.

Q. Where were you?

A. I was inside.

Q. What room were you in?

A. I was in the kitchen when they first came in.

Q. This is Monday night shortly after eight o'clock, isn't it?

A. About eight o'clock.

[fol. 376] Q. That you are talking about?

A. About eight o'clock, yes, sir.

Q. When you came there, you came there with Pasquale, didn't you?

A. Yes, sir.

Q. You came into this room and sat in this room (indicating on defendant's exhibit)? Indicated by the letter "A"?

A. Yes, sir.

Q. And Pasquale sat in the same room?

A. Yes, sir.

Q. And after a while Alba went out and returned with Centorino, didn't he?

A. I went out with him.

Q. That was the time that you say that you went out with him and you came back and found Pasquale Napolitano in the room, and after you had been in the house about twenty minutes Centorino came, is that right?

A. Yes, sir.

Q. Then you started to talk again about buying some cocaine, didn't you?

A. No, sir.

Q. Didn't you?

A. No, sir.

Q. Didn't say one word about buying cocaine after that?

A. No, sir; he just said he did not have——

Q. Answer my question?

A. No, sir.

Q. You did not say one word after Centorino came there with Alba about buying cocaine that night, did you?

A. No, sir; I did not say anything about buying.

Q. You are sure about that?

A. Yes, sir.

Q. And there was not another word spoken that night by you or Pasquale to either Centorino or Alba about buying cocaine that night, was there?

A. Yes, sir.

Q. There was?

A. Yes, sir.

Q. Did you say it?

A. No, sir.

Q. Who did say it?

A. Centorino said, "We have to go down to some place, some other house," but I don't know where he wanted to go.

[fol. 377] Q. What did you say?

A. I did not say nothing. Patsy said, "No." So the four of us went out on the street and we argued out on the street.

Q. I do not want to get into the street so fast. Is that the only thing that happened in the house up to the time that you went into the street?

A. That is all, yes.

Q. That is, Centorino said to you, "You will have to come down to my house at 172 Columbia Street," is that right?

A. No, he did not say "my house."

Q. Well, he said, "You will have to come down to Columbia Street?"

A. No, he said, "You will have to go somewhere else to get it."

Q. Pasquale said "No," is that right?

A. That is right.

Q. There was not another word spoken at that time?

A. Except——

Q. Now listen. There was not another word spoken at that time; then you all walked out into Union Street, is that right?

A. Yes.

Q. That is right?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Q. Now, you have told us everything that happened there Satur-

day night in the house at 138 Union Street; you have told us every conversation that neither you, Pasquale, Centorino or Alba had before you went out into the sidewalk, have you?

A. Yes, sir.

Q. Told us everything that took place?

A. Yes, sir; on Monday night.

Q. Sir?

A. On Monday night.

Q. On Monday night, before you walked out on the sidewalk, you four, Centorino, Alba and you and Patsy, is that right?

A. Yes, sir.

[fol. 378] Q. You are positive of that?

A. Yes, sir.

Q. All right, let us see. When Centorino came in, did he say to Pasquale, "All right, if you have got the seven hundred dollars with you, you can buy a kilo" before you walked out on the sidewalk?

A. I don't remember.

Q. Well, you would know if it was said, wouldn't you?

A. I don't remember.

Q. Is that your best answer?

A. Yes, sir.

Q. Is the reason that you do not remember because you have not given it as part of the conversation here today?

A. No, sir; I don't remember it.

Q. If Pasquale testified to that, would you say it was the fact or not the fact?

A. I would not say it was the fact.

Q. What?

A. No, sir.

Q. It was not the fact?

A. I would not say so.

Q. Is that your best answer?

A. Yes, sir.

Q. Your memory is good, isn't it?

A. Yes, sir.

Q. You remember distinctly everything that took place, don't you?

A. Yes, sir.

Q. Was any money shown in the room before you four went out on the sidewalk?

A. Yes, sir.

Q. Didn't I just ask you a minute ago if you told me everything that took place and you said that you did; didn't you?

A. I don't remember just that one thing.

Q. You don't remember?

A. No.

Q. You told me a minute ago, didn't you? Didn't you tell me a minute ago that you told me everything that took place?

A. Yes, sir; but I did not remember that one thing.

Q. Didn't you tell me that you were absolutely sure of everything that took place?

A. Yes, sir.

[fol. 379] Q. So that that is one thing that you did not remember, that you are not sure of, aren't you?

A. I am sure of that.

Q. Now, you are sure of it after I recall it to your attention?

A. Yes, sir.

Q. Isn't it a fact that then Pasquale said after having showed the money, "Well, if you don't want to sell it to me," and you all walked out, you all walked out on the sidewalk?

A. We did.

Q. That is another thing you did not testify to here?

A. You did not ask me.

Q. Didn't I ask you to tell me everything, all the conversation that took place after you walked out on the sidewalk?

A. That is right.

Q. Yes, I did ask you, didn't I?

A. Yes.

Q. So that when you told me a minute ago that I did not ask you, you were mistaken about that, weren't you?

A. No, I was not mistaken.

Q. Well, you just told me——

Mr. Brancato: I object to the argumentative way of counsel.
The Court: Yes.

By Mr. Price:

Q. Wasn't it the fact that after Pasquale said, "If you don't want to sell it to me," that you all walked out?

A. No, he said that out in the street.

Q. Oh, he did; he did not say it in the house?

A. No, sir.

Q. Didn't you just tell me a minute ago that was a part I refreshed your recollection on, that you did not remember as having taken place in the house?

A. That was on the street.

Q. It did happen on the street?

A. He said, "All right, if you do not want to sell it to me, I will go somewhere else."

[fol. 380] Q. That was out in the street, wasn't it?

A. Yes, sir.

Q. So that if Pasquale testified that that took place in the house and then you all walked out, would you say that that was not the fact?

Mr. Brancato: I object to the question on the ground that that is not the evidence on the record.

Mr. Price: It is the evidence on the record.

Mr. Brancato: I will challenge the record on that point

Mr. Price: So will I.

The Court: Where do you claim that it appears in the record?

Mr. Price: In Pasquale's testimony.

The Court: The question is, if Pasquale so testified, your testimony about that is different is that so?

Mr. Brancato: Put it that way; all right.

A. It is the way I said.

By Mr. Price:

Q. It is the way that you said it, and not the way that Pasquale said it, is that right?

A. Yes, sir.

Q. After that was said, Centorino walked away, didn't he?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. When you were out on the sidewalk and Pasquale said, "Well, if you don't want to sell it to me I will buy it elsewhere," nothing else was said at that time, was there?

A. Yes, Centorino said he would go down and get his partners and bring it up.

Q. So that if Pasquale testified that when you got out on the [fol. 381] sidewalk and he, Pasquale said, "If you don't want to sell it, I will go elsewhere," then without anything else having been said, "Centorino walked away," you would say that was not the fact, would you?

A. What did Pasquale say?

Q. Yes?

A. What did he say? I did not get you.

(The question was repeated by the reporter.)

A. Pasquale did not say, "If you don't want to sell it"—"If you don't want to sell it"—

Q. Yes.

A. (No answer.)

(The last question was repeated by the reporter.)

A. No.

Q. You would say that is not so, wouldn't you?

A. No.

Q. What?

A. Yes.

Q. After Centorino walked away, you went into the house with Pasquale Napolitano and Alba, didn't you?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Q. How long were you there in the house before any body came there, after going in, as you have testified, you three?

A. About fifteen minutes.

Q. You were seated in the room "A," weren't you?

A. Yes, sir.

Q. And Patsy was in the same room, wasn't he?

A. Yes, sir.

Q. Now, up to the time that the defendant Centorino and the defendants Agnello and the defendant Pace came back, had you ever been in the room "B?"

A. On the same day.

Q. Yes.

A. The same night?

[fol. 382] Q. Yes.

A. No.

Q. Did you walk up and down the kitchen in that twenty minutes, while you were there?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You just sat in the chair?

A. Near the window, yes.

Q. Up to the time that all of the defendants went into the room "B," you had never been in the room "B" on that night, had you?

A. On that night, yes.

Q. I say up to the time that they all went in, you were not—

A. When they all went in?

Q. Do you understand my question?

A. No.

Q. What do you try to answer it for if you do not understand it? Why do you try to answer a question that you don't understand?

A. I don't understand the question.

Q. I say up to the time that all the defendants went into the room "B" had you been in the room "B" that night?

A. No, sir.

Q. Did you go into the room "B" before the defendants went in or after the defendants went in?

A. After.

Q. After all of them were in the room?

A. After, yes, sir.

Q. Did Patsy go in with you?

A. Yes, sir.

Q. How long after you all were in the room "B" was the shot fired?

A. About five minutes.

Q. Then all of the officers came in?

A. Yes, sir.

Q. Where were you and Patsy when all of the officers came in?

A. In room "B."

Q. Was Patsy in room "B?"

A. Yes, sir.

Q. Patsy had not put his hand on any of the packages up to that time, had he?

A. No, sir.

Q. They were lying on the table?

A. Yes, sir.

[fol. 383] Q. He had not touched them?

A. No, sir.

Q. You had not touched them?

A. No, sir.

Q. You had not looked them over?

A. No, sir.

Q. Just before the officers came in, Patsy handed Alba this roll of bills which is in evidence, Government's Exhibit 10, didn't he?

A. Yes, sir.

Q. Was that rolled up like this?

A. Rolled up, yes.

Q. He gave it to him?

A. Yes, sir.

Q. Up to the time that the money was handed over, no shot had been fired?

A. No, sir.

Q. There was nobody coming, running in or breaking in the door at that time?

A. No, sir.

X Q. So that you were supposed to buy a kilo, Patsy was, wasn't he?

A. Yes, sir.

Q. For seven hundred dollars?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And Alba, the defendant Alba took the roll of money as Patsy handed it to him; is that right?

A. Yes, sir.

Q. And put it in his pocket?

A. Yes, sir.

X Q. Did not make any attempt to count it?

A. No, sir.

Q. He just put it in his pocket?

A. Yes, sir.

Q. What pocket did he put it in?

A. He put it in his hand. When the shot was fired—I don't know whether he put it in his back pocket or vest pocket.

Q. Didn't you just tell these four men that before any shot was fired, before any of the officers broke in, that Patsy had handed Alba the money and Alba had put it in his pocket?

X A. He did not have it in his pocket.

Q. Didn't you just say it?

A. If I said it, I don't remember. He did not have it in his pocket.

Q. Will you please answer my question? Didn't you just say that a minute ago?

[fol. 384] Mr. Brancato: I submit that he has answered the question.

The Court: Let him say if he answered that way.

A. I did answer the question.

The Court: He says that he did answer it.

Mr. Price: He did not. I want a categorical answer.

Mr. Brancato: Have you answered it?

By Mr. Price:

Q. Didn't you testify here just a few minutes ago in answer to my questions that before a shot was fired, Patsy had handel the defendant Alba this roll of bills and Alba had put it into his pocket before anybody broke in or any shot was fired; didn't you say that?

A. Yes, sir, I did.

Q. You did, didn't you?

A. Yes, sir.

Q. That is not the fact, is it?

A. No.

Q. Alba had it in his hand when the shot was fired?

A. Then he put it in his pocket afterwards.

Q. What pocket did he put it in?

A. I don't remember.

Q. You were watching him, weren't you?

A. I did not look after that—at him after that.

Q. You never looked at him after that at all that night, is that your answer?

A. Yes.

Q. Did you stay in the room "B" after that time?

A. Yes, sir.

Q. And did Pasquale stand in the room "B"?

A. Yes, sir.

Q. If I told you that Pasquale testified here that he did not see the defendant Thomas Agnello do anything or say anything, would that change your testimony?

A. He did not see him do anything?

[fol. 385] Q. Yes, or say anything?

A. After the shots were fired?

Q. At any time that night, up to the time that the officers came in?

A. I do not get you right.

Q. All right. I will try to make it a little plainer. If Patsy Napolitano testified that all he saw Thomas Agnello do was to stand in the room "B," three feet away from the table, and did not see him do anything or did not hear him say anything, would you say that was not the fact?

A. No, sir.

Q. It is not the fact?

A. It is the fact.

Q. What?

A. It is not the fact.

Q. If Pasquale Napolitano testified that the defendant Pace stayed in the room "B" three feet away from the table and did not do anything or say anything, would you say that is or is not the fact?

A. It is not the fact.

Q. Well, now, after the men broke in, you were lined up with the other defendants, weren't you?

A. Yes, sir.

Q. They made a bluff that you were wanted as a prisoner, didn't they?

A. No, sir.

Q. They lined you up there; they had a proceeding there to make it appear that you were under arrest, didn't they?

A. No, sir.

Q. Are you sure about that?

A. Yes, sir.

Q. If Pasquale said that was the fact, you would say it was not, wouldn't you?

A. Yes, sir.

Q. If Officer Manning testified that was the fact, you would say that it was not the fact too, wouldn't you?

A. Yes, sir.

Q. Now, you only saw two blue packages on the table, is that right?

A. Two or three; I don't remember correctly.

[fol. 386] Q. Didn't you testify here this morning at least three times in reply to questions asked by Mr. Brancato that you saw two packages on the table?

A. Two or three; I don't remember correctly.

Q. You don't remember what you testified to here this morning, do you?

A. I do.

Q. With respect to the packages?

A. I do.

Q. Do you tell these jurors now that you did not say that there were three packages?

A. Two or three, I said.

Q. Two or three. You said two or three; are you sure of that?

A. Positive.

Q. There was not four on the table?

A. No, sir, there was not.

Q. If Pasquale testified that there were four on the table while you were there, you would say that was not the fact?

Mr. Brancato: I object to that question.

The Court: Objection sustained. All he can do is to give his version and not correct anybody else's testimony. All he may state was what was the fact.

Mr. Price: I am asking him if Patsy testified that there were four packages on the table when he was in the room standing next to the table, then there were four there?

The Court: That you may answer.

Mr. Brancato: I object further on the ground that that is not the evidence given by Patsy.

The Court: No matter what Patsy may have said about it, he is asked whether it is his testimony that that is the fact. He said, "No." Is that correct, Mr. Witness?

The Witness: Yes.

[fol. 387] Mr. Price: I think that is all.

The Court: Mr. Kesselman, do you wish to cross examine?

Mr. Kesselman: Yes.

Cross-examination by Mr. Kesselman:

Q. Where were you employed last December, Nunzio?

A. Last December I was out of work.

Q. Where were you employed last November?

A. I was out of work.

Q. Where were you employed last October?

A. I was out of work.

Q. Where were you employed last month, February?

A. Out of work.

Q. Are you employed this month?

A. No, sir.

Q. The only job you have had—what is your title, investigator?

A. Yes, sir.

Q. How long were you on the payroll of the United States Government?

A. One month.

Q. How much did you get for that?

A. I don't remember.

Q. Were you paid in cash or by check?

A. By check.

Q. Was that check made payable to your order?

A. Yes, sir.

Q. Who is it that took you over to the Narcotic Division?

A. Nobody.

Q. Did you go over there yourself?

A. Yes, sir.

Q. Did you volunteer to be an investigator?

A. Yes, sir.

Q. Did you ever have any business with the Narcotic Division?

A. Yes, sir.

Q. Along the same lines?

A. No, sir.

Q. Did anybody suggest that you go there and look for work as an investigator?

A. No, sir.

[fol. 388] Q. Who did you see when you went over to the Narcotic Division?

A. I saw Pacetti.

Q. Did you know Pacetti?

A. I do.

Q. Did he tell you to come over there and apply for a position?

A. No, sir.

Q. Nobody at all made any such suggestion to you?

A. No, sir.

Q. Who else did you see when you were over there aside from Pacetti?

A. Mr. Oyler.

Q. The same day?

A. Yes, sir.

Q. When was that?

A. It was in the beginning of January.

Q. The early part of January?

A. Yes, sir.

Q. Did you work on any other case in the month of January?

A. No, sir.

Q. How many days did you actually spend on this Union Street job?

A. Five or six days.

Q. And they paid you for the entire month?

A. Yes, sir.

Q. You don't remember how much you got?

A. No, sir.

Q. You said something about hanging out at Court and Union Streets?

A. Yes, sir.

Q. What kind of a hang-out joint or place is that that you hang out at?

A. No hang-out; just on the corner.

Q. You said it was a hang-out place at Court and Union Street?

A. It is not.

Q. Didn't you say that in answer to questions by Mr. Brancato, "That is where I hang out"?

A. That is where I stay nights.

Mr. Brancato: Mr. Price asked him.

Mr. Kesselman: We will refer to the record if there is any doubt of it.

Q. Didn't you say to Mr. Brancato that "That is where I hang out, at Court and Union Street"? Didn't you say that?

A. I don't remember.

[fol. 389] Q. Well, do you hang out at Court and Union Street?

— I do not hang out but I stay there.

Q. Where do you stay, out in the street?

A. Yes.

Q. How long have you been hanging out at Court and Union Street-, or staying at Court and Union Street?

A. Oh, I don't know how long; five or six months or a year.

Q. You lived in that neighborhood some time ago, didn't you?

A. I did.

Q. You lived down in Columbia Street, didn't you?

A. No, sir.

Q. Where did you live?

A. I lived at Union Street and Sixth Avenue.

Q. Did you ever live anywhere around near Columbia, Columbia and Hick Street- or Sackett Street and Union Street?

A. That is before I was married, yes.

Q. Yes; your father is a butcher there, isn't he?

A. No, sir.

Q. Your uncle is a butcher there, isn't he?

A. No, sir.

Q. Any of your relatives in business in that neighborhood?

A. About twenty blocks away from there.

Q. I am asking about that neighborhood?

A. No, sir, not around there.

Q. I am not talking about twenty blocks away.

Mr. Brancato: What do you mean by "neighborhood"?

Mr. Kesselman: He is telling me something about twenty blocks away. What do you mean by it?

Mr. Brancato: You are asking the witness; do not ask me.

Mr. Kesselman: We will let the jury decide what "neighborhood" means.

[fol. 390] Q. Do you live in MacDougal Street now?

A. Yes, sir.

Q. That is out in the East New York section?

A. Yes, sir.

Q. That is a great many miles away from Columbia or Union Street and Court Street?

A. Yes, sir.

Q. When you say that you used to hang out on the corner of Court and Union, how many nights a week did you hang out there?

A. About two or three times a week.

Q. Whom did you meet on these nights that you used to hang out at that place?

A. Friends of mine.

Q. Tell me who they are?

A. Well, a fellow by the name of "Johnny."

Q. Johnny what?

A. I don't know his second name.

Q. Where does he live?

A. He lives down in Douglas Street.

Q. Douglas and where?

A. Douglas near Court.

Q. How long have you known him?

A. I know him about a year.

Q. You cannot tell his last name?

A. No, sir.

Q. Who else did you meet there when you hung out there?

A. He is the only one.

Q. Is he the only person that you met during the time that you were hanging out at that corner?

A. Yes, sir.

Q. By the way, what are there on those four corners of Court and Union?

A. There is a saloon, gas company, fish store, and I think there is another saloon.

Q. Of course, you did not go into either of those saloons at any time?

A. No, sir.

Q. You would not go into a saloon?

A. No, sir.

[fol. 391] Q. What time did you go there on the nights that you hung out on that corner?

A. About eight o'clock.

Q. How long did you continue to hang out there?

A. Until nine or ten o'clock.

Q. Were you living with your wife all this time?

A. Yes, sir.

Q. Married?

A. Yes, sir.

Q. You left her all alone away up in East New York, miles away?

A. Yes sir.

Q. Of course, there is nobody in that neighborhood that you knew, up in MacDougal Street?

A. No, sir.

Q. Not a soul?

A. No, sir.

Q. How long have you lived up there?

A. About six months.

Q. Where did you live before that?

Mr. Brancato: If the Court please, I object to any further questions along these lines. I think they have gotten pretty nearly all they want to get out of him as to his address.

The Court: He may answer where he lived.

Mr. Kesselman: I will withdraw the question.

Q. Had you ever spoken with Alba prior to the 14th of January?

A. No, sir.

Q. Did you know him before then?

A. No, sir.

Q. Ever see him in your life?

A. No, sir.

Q. Never bought any cocaine or anything from him before that day, did you?

A. No sir.

Q. Of course, when you went there on the 14th it was your idea to have him sell you or Patsy some narcotics?

A. Yes, sir.

Q. Of course, it was your intention to induce him to commit a crime if you could?

A. I don't get you.

[fol. 392] Q. Was it your intention to induce him to commit a crime of selling narcotics if you could?

Mr. Brancato: I object to that on the ground that it is a legal conclusion.

The Court: Objection overruled.

Q. You wanted him to sell some narcotics to you or Patsy, didn't you?

A. Yes, sir.

Q. You were ready to lend yourself to be a part of the crime to be committed if he would sell some, weren't you?

A. I do not get you there.

Q. You know if any narcotics were sold that Alba would be guilty of some crime?

A. Yes, sir.

Q. Of course, you were ready to participate yourself in the crime to be committed?

A. I do not get you there.

Q. What is there about my question that you do not understand?

A. I do not understand it.

Q. What is there about it which you do not understand?

A. The participating stuff.

Q. Do you know what "participating" means?

A. No, sir.

Q. Do you know what "take part" means?

A. Yes, sir.

Q. Now we will substitute the words "take part" for "participating" and see if you can answer my question then.

(The question was then repeated by the reporter as follows: "Of course, you were ready to take part yourself in the crime to be committed?"')

A. No, sir.

Q. Would you have been disappointed if Alba said he had no narcotics to sell?

A. No, sir.

Q. He told you that he had none, didn't he?

A. He told me that he had it.

[fol. 393] Q. Did you ask him for some?

A. Yes, sir.

Q. He didn't have any, did he?

A. No, sir.

Q. Told you the first time that you spoke to him that he had none?

+ A. He said he did not have it in his house; that is all he said to me.

Q. What did he say to you?

A. He said he did not have it in his house; that he would get it.

Q. Tell me the exact words that he used?

+ A. He says: "We haven't got none. We had trouble before"——

Q. You want to bring that in, about the trouble before, don't you?

A. No, I don't want to bring it in.

Q. Didn't His Honor instruct you previously today to omit that?

Mr. Brancato: If the Court please, counsel is insisting, asking about it, bringing it out.

Mr. Kesselman: I am asking him about the sale; he is bringing something else up.

Mr. Brancato: You are asking for the conversation.

Q. Did you hear his Honor, Judge Garvin, say to you that you must not say anything about that?

A. Yes, sir.

Q. Still you repeat it again?

A. You are asking——

Q. I asked you about narcotics, didn't I?

A. Yes.

Q. I did not ask you about any other trouble?

A. You asked me about the conversation.

Q. About narcotics; isn't that what I asked you? I did not ask you about any other that anybody was in, did I?

A. You asked me about the conversation.

Q. Did I ask you about any other trouble that anybody was in?

A. No, sir.

[fol. 394] Q. You understand it now, do you?

A. Yes.

Q. I asked you about narcotics, didn't I?

A. Yes, sir.

Q. He told you that he had no narcotics. Do you know anybody by the name of Mancini, who lives in that neighborhood, or Manchini, who lived on Canal St.?

A. No, sir.

Q. Do you know anybody by the name of Charles Manchini?

A. No, sir.

Q. Who do you know in that neighborhood?

A. I don't know anybody down there.

Q. Not a soul?

A. Except the man that worked with me.

Q. That is Patsy?

A. No, the other man.

Q. In the Narcotic squad?

A. No, sir.

Q. Where did you meet Patsy on the 14th of January?

A. Up in the office.

Q. Which office?

A. Old Post Office building, New York.

Q. Who told you to be there on that day?

A. I was there the day previous to that.

Q. Friday?

A. Yes, sir.

Q. Did anybody instruct you to be there the following day?

A. No, sir.

Q. You just walked in?

A. Yes, sir.

Q. What time was it that you walked in?

A. I don't remember the time.

Q. Was it three o'clock in the morning?

A. It was not three o'clock in the morning.

Q. Was it eight o'clock in the morning?

A. No.

Q. Tell me; give me your best idea?

A. I don't remember.

Q. (Continuing:) What time it was that you walked in?

A. Well, about eleven o'clock; ten o'clock; I don't remember.

Q. Whom did you talk to when you came there?

A. I don't remember who I talked to.

[fol. 395] Q. Did you talk to Pacetta?

A. Yes, sir, I did.

Q. Did you talk to Mr. Oyler?

A. I did.

Q. You remained in the office from eleven o'clock until when?

A. Until about twelve-thirty.

Q. And where did you go then?

A. Union Street.

Q. After you left Union Street, where did you go?

A. Right to the office.

Q. What time did you get back to the office?

A. About four o'clock.

Q. Tell me where it was that you cashed your check which you got from the government for the month of January?

A. I don't remember where I cashed it.

Q. Your memory is very good as to what happened in the early part of January, isn't it?

A. Yes, sir.

Q. You are testifying here to little details as to what happened on the 14th and 16th of January?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. But what happened on the 31st of January as to cashing your check, you cannot tell us?

A. No, sir.

Q. Would it change your testimony if I told you that when Patsy testified here he said that neither Agnello nor Pace said or did anything in that room other than stand two or three feet away from the table?

A. No, sir.

Q. It could not change your testimony?

A. No, sir.

Q. He is mistaken and you are right?

A. Yes, sir.

Q. Of course, you never make any mistakes?

A. I might.

[fol. 396] Q. Have you ever made any mistakes?

A. I don't know.

Q. Then you are always right, aren't you?

A. Yes, right.

Q. Were you talking to Agent Manning on Monday night?

A. Yes.

Q. Of course, you did not say anything about this case?

A. We did.

Q. Did you discuss the evidence that you were going to give here?

A. No, sir, he just asked me—to send me down here.

Q. You did not discuss the evidence with him, did you?

A. No, sir.

Q. You did not discuss the testimony which you have given here today with anybody?

A. No, sir.

Q. You want this court and jury to understand that all the government agents and the district attorney have taken you and put you on the stand without anybody asking you a question?

A. No, sir.

Q. Isn't that true?

A. Yes.

Q. That is what you want the jury to understand?

A. Yes, sir.

Q. Nobody has discussed anything with you from the 16th of January about this case?

A. No, sir.

Q. Is that correct?

A. Yes, sir.

Q. You never spoke with Mr. Oyler or any of the other agents on the 17th?

A. No, I did not speak to him about the case.

Q. You did not discuss your testimony with anybody?

A. No, sir.

Q. At any time after the 16th of January?

A. No, sir.

Q. Did Patsy ever call at your house?

A. No, sir.

[fol. 397] Q. Every time that you saw Patsy—I assume that you saw him over at the office in the Post Office Building?

A. Either at the office or restaurant.

Q. Where was that restaurant?

A. On Columbia and President.

Q. What is the name of the proprietor of that place?

A. Cafiero.

Q. How long have you been going to that place?

A. About a year.

Q. Have you a telephone in your home?

A. No, sir.

Q. Did Patsy ever call you up on the telephone?

A. No, sir.

Q. At no time?

A. No, sir.

Q. At no place?

A. No, sir.

Q. If Patsy says at any time he wanted to get hold of you, he got you on the telephone in the cigar store, why he is mistaken and you are right again?

A. Yes, sir.

Q. That would not change your testimony at all that Patsy said so?

A. No, sir.

Q. Were you in the room when all the men were lined up after the United States agents came in?

A. Was I in the room when?

Q. You know the men were put up against the wall; that is, all the defendants?

A. Yes.

Q. Please answer, yes or no?

A. Yes.

Q. Were you lined up with them?

A. No, sir.

Q. Wasn't a pretense made of placing you under arrest?

A. No, sir.

Q. If Manning says that there was a pretense made of placing you under arrest with the other defendants, why, of course, would that change your testimony?

A. No, sir.

Q. You would say he is mistaken?

A. Yes, sir.

[fol. 398] Q. And you are right again?

A. Yes, sir.

Q. This 138 Union Street is a pretty dark neighborhood, isn't it?

A. What do you mean by "dark"?

Q. There is no electric light in front of this building, is there?

A. I don't know if there is or not.

Q. You were there twice, weren't you?

A. Yes, but I don't remember if there is electric lights or not.

Q. There is no store adjoining 138 Union Street on either side, is there?

A. I don't remember.

Q. Is there anything across the street, directly opposite 138 Union Street which would throw a lot of light in front of No. 138?

A. I don't know.

Q. You were there twice, weren't you?

A. I did not look across the street.

Q. You hung out in that neighborhood for a year?

A. Oh, that is a long distance away.

Q. A long distance?

A. Yes, about five—

Q. How many blocks away did you hang out from No. 138?

A. About five blocks.

Q. Let us count them along Court Street. What is the next block from Union?

A. You want to count from Hick Street up.

Q. From Union and Court Street; where did you hang out?

A. Union and Court.

Q. Where is No. 138 Union Street from Court?

A. Between Columbia and Hick.

Q. As you go west from Court Street, the first block is what, Clinton?

A. Clinton.

Q. The second block is what?

A. Henry.

Q. The next block?

A. Hick Street.

Q. The next block?

A. Columbia.

Q. Where is No. 138?

A. Between Hick and Columbia.

[fol. 399] Q. That's just three blocks, isn't it?

A. Yes, sir.

Q. It is not five blocks?

A. It is not five blocks.

Q. Will you admit that you are mistaken in something?

A. Yes, I do.

Mr. Kesselman: That is all.

Mr. Price: I omitted to ask some questions.

The Court: Very well.

Recross-examination by Mr. Price:

Q. You were not down in the neighborhood of 172 Columbia Street on January 16th at about eleven or eleven-thirty in the morning, were you?

A. No, sir, I was not.

Mr. Price: Bring Mrs. Centorino in here, please.

(Mrs. Centorino brought into the court room.)

By Mr. Price:

Q. You did not see Mrs. Centorino, this lady, standing here, on the morning of January 16th, did you?

A. No, on the night of January——

Q. You did not see her standing there talking——

The Court: On the night of that day he said.

By Mr. Price:

Q. You saw her on the night of that day?

A. Yes, sir.

Q. But you did not see her in the morning?

A. No, sir.

Q. You did not go to No. 172 Columbia Street, Centorino's home, [fol. 400] on the morning of January, 16th, at 11.30, and find Centorino standing there talking to his wife?

A. No, sir.

Q. You did not call him to one side and give him a package which contained this cocaine, did you?

A. No, sir.

Q. If that were the fact, you would come here and say "Yes," would you?

A. No, sir.

Mr. Price: That is all.

By Mr. Kesselman:

Q. You know, that in order to connect the defendant, Tom Agnello, and the defendant Pace with this conspiracy, with this crime, that you have got to testify to something which would bring them in?

Mr. Brancato: I object to that as incompetent, irrelevant and immaterial and calling for a conclusion.

The Court: Objection overruled.

(The last question was repeated by the reporter.)

A. No.

By Mr. Kesselman:

Q. You don't know that?

A. No.

Q. Nobody told you?

A. No.

Q. Don't you know that you have tried to do that in your testimony?

A. No.

Q. Don't you know that the little spot which was lacking you have taken and plugged up in the two cases; don't you know that?

Mr. Brancato: I object to the question as argumentative. There is no evidence of any spot missing so far.

The Court: Objection overruled.

[fol. 401] A. No.

Q. You did not know.

A. No.

By Mr. Kesselman:

Q. Is it you don't know or you don't want to answer?

A. I don't know.

The Court: Are you all through with this witness?

Mr. Price: I ask your Honor to direct this witness to be here tomorrow morning. I want my witnesses to identify him.

The Court: Very well.

Redirect examination by Mr. Brancato:

Q. You have testified to the facts of the case as you remember them; isn't that so?

A. Yes, sir.

Q. No matter what anybody else has testified to, you have given your story as you remember it?

A. Yes, sir, I have.

The Court: Be here tomorrow morning, please, at 12 o'clock noon.

Mr. Brancato: The Government rests.

Mr. Price: With the reservation of having this man present, so that my witnesses may identify him, I am finished with this witness. I reserve that right?

The Court: Oh, yes. He is directed to be here for the purposes of identification.

Mr. Wackerman: I move to dismiss the indictments on the ground urged before that the allegation as to sale of heroin and cocaine is so vague and indefinite as to mislead the defendant and not apprise him of the charge against him.

[fol. 402] The Court: Does this defendant state that he thought the Government was charging him with selling something that was a derivative of cocaine?

Mr. Wackerman: No.

The Court: That he was charged with selling heroin, which is a derivative of morphine and cocaine?

Mr. Wackerman: No. I state on behalf of my defendants, that I thought, after a careful reading of that indictment, that the defendants represented by me were charged with selling heroin, a derivative of opium and cocaine.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss as against Frank Agnello on the ground that there is no proof that he sold or participated in any sale of any heroin.

The Court: Motion denied.

Mr. Wackerman: Exception.

Mr. Brancato: As to heroin?

The Court: I understand that, but I am not going to dismiss the indictment because there is no proof of heroin.

Mr. Wackerman: I move to dismiss on the ground that there is no proof of any sale of cocaine.

The Court: Motion denied.

Mr. Wackerman: Exception.

Now, I move to dismiss on the ground that the Government has failed to prove that these defendants are in the class required by Section 8 of the Harrison Act, required to be registered.

[fol. 403] The Court: Motion denied.

Mr. Wackerman: Exception.

Mr. Brancato: Section 8 or 1?

Mr. Wackerman: Sections 8 and 1.

I now move to dismiss on the ground that there is no proof that these defendants are so engaged in business, as set forth in the Harrison Act, as to be obliged to register.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss on the ground that if the Court holds that these defendants are obliged to register under Section 1 of the Act they have until July 1st of the year to do so.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss on the ground that the Government has failed to negative the exceptions contained in Section 1 of the Act, in that they have not proved that these defendants are not employees of a person who has registered and paid the special tax set forth in Section 1 of the Act.

The Court: What do you think of that, Mr. Brancato?

Mr. Brancato: That is simply answered. The Statute says we do not need to negative anything.

Mr. Wackerman: The Statute says nothing of the kind. The Statute in Section 8 says the Government is not required to negative any of the exceptions contained in that section.

Mr. Brancato: I have read the act thoroughly.

[fol. 404] The Court: Motion denied.

Mr. Wackerman: Exception.

I move to dismiss the indictment in this case as it does not state a crime for the reason that it has been held by the United States Supreme Court and various District Courts that the allegations that the defendants are not required to register and pay a special tax is an immaterial allegation as the crime of selling narcotics and giving away narcotics is prescribed in Section 2 of the Harrison Act, that—if you will just let me make my motions without interrupting, Mr. Brancato, we will get along much faster.

Mr. Brancato: I just came over here to sit down.

The Court: Very well.

Mr. Wackerman (continuing): And that the allegations that the defendants have not registered and have not paid a special tax is—does not constitute a crime, because in addition to not registering and not paying the special tax they are obliged to sell the stuff, to sell the narcotics or give them away, and are not allowed, excepting in pursuance of a written order of the person to whom such article is sold, bartered, exchanged or given, on a form prescribed by the Collector of Internal Revenue.

The Court: Motion denied.

Mr. Wackerman: Exception.

Mr. Kesselman: I move to dismiss the indictment against all the defendants now on trial, and each of them, upon the ground that the prosecution has failed to make out a case of conspiracy against [fol. 405] the defendants, or any of them, in that there has been no testimony adduced or given by the prosecution which tends to show the formation of a conspiracy by the defendants, and that the Government has failed to show:

- (1) that there was a unity of design and purpose;
- (2) that an agreement on the part of the defendants to commit a crime as charged in the indictment;
- (3) or any concerted action on the part of the defendants, tending to show an agreement or conspiracy to commit a crime of conspiracy, as charged in the indictment.

The Court: Motion denied.

Mr. Kesselman: Exception.

Mr. Kesselman: That at most the testimony shows that certain moneys may have been received by certain defendants, acting independently of one another, not in concert with the other defendants, or in pursuance of any prearranged plan, which is essential to the commission of the crime of conspiracy.

The Court: Motion denied.

Mr. Kesselman: Exception.

I ask your Honor to advise the jury to acquit the defendants on the following grounds:

(1) That the evidence is insufficient as a matter of law, to convict the defendants of any crime.

(2) That the prosecution has failed to prove the defendants guilty beyond a reasonable doubt.

(3) That the prosecution has failed to rebut the presumption of innocence that the defendants are entitled to at all times until the [fol. 406] jury has found them guilty; therefore they should be acquitted.

(4) That the prosecution has failed to prove affirmatively that the defendants did unlawfully and feloniously conspire to commit an offence against the United States; that upon the evidence of the prosecution, it clearly appears that no proof of a competent and legal character was presented to sustain the allegations in the indictment; that as a matter of law such proof does not come up to the standards recognized by law.

Now, if your Honor please, I also move to quash the indictment and add to that motion a motion to direct a verdict, to direct the jury to bring in a verdict of not guilty.

The Court: Each motion is denied.

Mr. Kesselman: Exception.

I call your Honor's attention specifically to the fact that there is no evidence to connect the defendant Pace with the conspiracy in any form whatever.

The Court: Motion denied.

Mr. Kesselman: Exception.

I call your Honor's attention——

The Court: There is no motion.

Mr. Kesselman: I move to dismiss specifically against the defendant Pace upon the ground that there has been no evidence adduced by the defendant in any wise connecting him with the crime of the conspiracy as charged in the indictment.

The Court: Motion denied.

Mr. Kesselman: Exception.

I make the same motion on behalf of the defendant Thomas Agnello.

The Court: Motion denied.

Mr. Kesselman: Exception.

[fol. 407] Mr. Price: I make a motion on behalf of my client, Centorino, on all the grounds stated by Mr. Wackerman and Mr. Kesselman, to dismiss, and ask for the direction of a verdict of not guilty.

The Court: Motion denied.

Mr. Price: Exception.

I move to strike out all of the testimony which your Honor received in this case on the ground that there is absolutely no—it was received subject to a motion to strike out—on the ground that there is absolutely no proof here of a conspiracy between the defendants and on the further ground that the last witness testified that the arrangement was complete before the arrival of the four defendants, Centorino, the two Agnellos, and Pace.

The Court: Does the Government desire to be heard upon the propriety of striking out except as to the defendants making the statements themselves, everything said prior to January 16th? It does not seem to me that there is any proof whatever of conspiracy prior to January 16th.

Mr. Brancato: If the Court please, on January 14th these was a conversation had between two men, this Centorino and Alba.

The Court: There might have been a conspiracy between those two, but can we bind defendants who enter a conspiracy later upon or by what was said in the conspiracy prior to the time it began?

Mr. Brancato: Your Honor knows, I think, we had the point up before, that a conspiracy between two men can be concocted today.

The Court: Yes.

Mr. Brancato: And it will continue over a year from now, and I will come in knowing that there was a conspiracy, I am guilty [fol. 408] of a conspiracy; I form a third party, and so on until you have fifty men in the same conspiracy. Now, as the egg was laid for that conspiracy on the 14th—

The Court: It is your contention that all the defendants who enter a conspiracy at a later date than the date at which it was formed, are bound?

Mr. Brancato: By the statements made by the beginners.

The Court: By a co-conspirator's statement at the time the conspiracy began?

Mr. Brancato: Yes, sir.

Mr. Price: I do not think that there is any evidence here of a conspiracy.

The Court: Oh, well, if the jury accepts the testimony offered by the Government that Centorino and Alba talked over the question—

Mr. Price: That cannot make it a conspiracy.

The Court: They can very easily find that. You do not have to have people agree in words.

Mr. Price: There is absolutely no evidence here of a conspiracy in any crime.

The Court: The Court is perfectly clear on that subject, that there is ample to justify the jury to find that there was a conspiracy, if they accept the evidence. The question is now whether if the jury find that these other defendants entered the conspiracy on the 16th, whether they are bound by the statements made by co-conspirators from the time the conspiracy began.

Mr. Price: No, they could not, except the Government could show, which they have not in this case, that at the time the defendants—if the Jury believe from the evidence that they did enter into the conspiracy, had knowledge as to what happened before, they could not be bound by anything which happened before.

[fol. 409] The Court: I will deny the motion with leave to renew, if you show me authorities.

Mr. Brancato: I will try to show authorities.

The Court: Submit authorities on that. I think the Government is correct.

Mr. Brancato: We had that point before in the case at the time the watchman was on trial, if your Honor please, the "King Alexander" case.

Mr. Wackerman: Does your Honor rule now that my client, Frank Agnello, by being present on the 16th adopts everything done by Alba and Centorino on the 14th?

The Court: Yes, sir.

Mr. Wackerman: He adopts that whether he knew it or not?

The Court: Oh, yes.

Mr. Wackerman: May I have an exception?

The Court: Yes, to all parties, with leave to renew. I will strike this all from the record if you show me the authorities, but I am satisfied that I am correct.

Mr. Kesselman: I will ask your Honor's indulgence to to-morrow morning.

The Court: You can open to the jury now.

Mr. Kesselman: As far as I am concerned, I do not believe the Government has proved any case and I do not intend to offer any proof for my defendants.

The Court: How about you, Mr. Price?

Mr. Price: I intend to, but I have not got any witnesses here.

The Court: Mr. Kesselman thinks he won't have any opening, because he thinks the Government has made no case.

Mr. Price: I will open to the jury.

[fol. 410] (Mr. Price opened up the defendants' case to the jury.)

Mr. Brancato: Do I understand that Centorino is going to plead guilty to selling these narcotics?

Mr. Price: I object to that statement. That is an unfair statement to make. I specifically stated that there was no sale. I specifically stated—

The Court: The answer is "No," he is not going to plead guilty.

Mr. Price: He is certainly not. I have one witness here this afternoon that I can call.

The Court: You have your client that you can call too.

Mr. Price: I have a witness who is well known in this vicinity, Captain Jones, who is a retired police captain, who has testified in a good many homicide cases and a good many other cases. He is a pistol expert and he is going to take the witness stand, I believe, and tell you that he has been down today to these premises, 138 Union Street; that he examined this window, that he examined the glass where the bullet was fired through the window. He is going to testify for you that the bullet entered where this little piece is out of the window, cracking this glass, and did not enter the top pane but the bottom pane with the piece out of the glass; that it went against the wall, and that in his opinion, and he is a well qualified expert, that this paper was on the glass at the time that the bullet was shot through.

The Court: Call him.

Mr. Brancato: If the Court please, I think the Captain is prematurely called. There is no evidence of any marks in the house.

Mr. Price: Isn't there? I will show you.

[fol. 411] Mr. Brancato: He will testify that he saw it today; he did not see it on January 16th. There is no evidence that any glass or hole either was made by a bullet.

The Court: That will all have to be proven. He wants to let the Captain go.

Mr. Brancato: I object to it at this time, if the Court please.

The Court: Objection overruled.

WILLIAM A. JONES, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your name?

A. William A. Jones.

Q. You were formerly a captain in the New York City Police force?

A. I was acting captain in the detective bureau.

Q. How long, please, were you in the Police Department?

A. Thirty-two years.

Q. During that time have you examined revolvers?

A. I have.

Q. A good many?

A. From 1895 to 1912 I was instructor in pistol practice for the Police Department.

Q. During that time, and many times after that have you testified in homicide cases?

A. I have.

Q. And a good many other cases?

A. Yes, sir.

Q. In regard to the direction of bullets?

A. Yes, sir.

Q. With the manner of discharging firearms?

A. Yes, sir.

Q. Now, did you go to the premises, 138 Union Street, today?

A. Yes, sir.

[fol. 412] Q. I show you a photograph, Defendant's Exhibit A, did you go in there, into the room marked "B" and examine the room?

A. Yes, sir.

Q. Did you examine the room with reference to a pistol shot or a bullet, Captain?

A. I did.

Q. Where was the—will you please describe what you found there?

A. I found in the back of the room in the ceiling the track of where a bullet has ricocheted from the ceiling and struck the side wall. I measured it with the tape so as to get the angle of it from where it was possibly fired. I had a man stand on the table on a box and held this tape up to the bottom hole and had it pass out through the window. I held a stick perpendicular on the cellar door and placed the tape on the stick so that I could look toward the bullet hole; to the bullet hole in the ceiling—the bullet hole in the glass with the bullet hole in the ceiling. It measured nineteen feet from where it struck the wall, the ceiling, to where it could strike the angle outside the window on the stick that I stood upright. Now that showed the pistol had been held five feet three inches from the cellar door. Now, if any one was standing outside of the railing on the sidewalk, that would put it just a trifle lower so that then the pistol was held four feet—

Mr. Brancato: Now, if the Court please, I object to these conclusions of the witness unless we have a certain state of facts first. Now, he said he has measured something, a hole down to a window, that is all. That is the only fact that he has. I submit that any conclusions should be based on that only.

The Court: You are limiting yourself in the statements that you made to the conditions as you found them there?

[fol. 413] The Witness: Yes, sir. Now, it was four feet ten inches from the window to where the bullet left the pistol, I should say, about four feet ten inches from the window.

By Mr. Price:

Q. You traced the course of that bullet, did you?

A. Yes, sir.

Q. Can you state with reasonable certainty where the person was at the time that that bullet went through there?

Mr. Brancato: I object to the question upon the ground that there is no foundation laid as to any tracing on that wall or ceiling.

The Court: Objection overruled.

A. (Continuing:) A person could have stood just outside of the railing, with the arm outstretched this way (indicating) and that would bring it just about right.

By Mr. Price:

Q. Now, I will ask you to look at this defendant's Exhibit A, at this corner of the glass which is broken; will you please describe for me that glass?

A. I examined the glass——

Mr. Brancato: I object, if the Court please, to the question, on the ground that there is no evidence that the glass, as this man saw it yesterday, or today, is the same glass that was there on the 16th.

The Court: I understand that that is going to be connected up. You are going to prove that, you said?

Mr. Keselman: Certainly.

Mr. Price: Yes.

The Court: Objection overruled.

[fol. 414] A. (Continuing:) From examining the glass I found that there is a circular spot in the glass and the inside is chipped off on a bevel, as the bullet always does on glass. It is apparently to me a bullet hole in the glass.

By Mr. Price:

Q. Can you state with reasonable certainty whether or not the hole in the right hand light of the glass in this window "B" up in the left hand corner of that light of glass was caused by a bullet?

Mr. Brancato: Again I object, if your Honor please, upon the ground that there is no evidence here that this hole or the hole at the time the photograph was taken, is the same hole as was in the glass on January 16th.

The Court: It is understood that will all be explained.

A. I would say it was a bullet hole, yes, sir.

By Mr. Price:

Q. Would you say a bullet would make that kind of a hole in the glass, and the crack in the glass?

A. Yes, sir.

Q. Have you examined the paper on that window, Captain?

A. Yes, sir.

Q. You have?

A. Yes, sir.

Q. With reference to the bullet hole?

A. Yes, sir.

Q. Will you please describe what you found to the jury?

A. Well, inside that paper had been torn from around the—where the bullet hole went through the glass. That was missing, but there was there a paper pasted over that paper so as to cover up the hole in the glass.

[fol. 415] Q. Would you say that a bullet tore that paper or could you so state?

A. The paper that was on the window?

Q. Yes, sir.

A. I could not say that because there is some of it missing. There is not anything in that paper to show me; the paper that is pasted on where the bullet passed through it; it is missing.

Q. That is over the corner where you mean the hole was?

A. Yes, sir.

Q. Did you examine the other paper which was on the window?

A. Yes, sir.

Q. Can you state with reasonable certainty how long that paper was on the window?

A. That was on there quite a long time.

Q. Can you state with reasonable certainty whether or not the paper was on the window at the time the bullet hole was made in the glass?

A. I think it was; I should say it was.

The Court: That is not the point. Can you state with reasonable certainty.

The Witness: I don't know the date of the shooting.

Mr. Price: The date was January 16th.

The Witness: That paper has been on there a good deal longer than January 16th.

Mr. Price: That is all.

Cross-examination by Mr. Brancato:

Q. Now, how much are you getting for coming here to testify?

A. Sir?

Q. What are you being paid to come here to testify today?

A. Fifty dollars.

Q. Who is paying it?

A. Mr. Kesselman called me up and asked me to come over here.
[fol. 416] Q. You do that sort of work, do you, of coming into Court as a professional witness and testifying for money?

A. I have, all over the United States.

Q. You say you went down to this place at Number 138 Union Street; is that right?

A. Yes, sir.

Q. You went down there today?

A. Yes, sir.

Q. Did you measure the distance, the length of that room "B"?

A. I did not measure the distance.

Q. You did not measure the room "B," did you?

A. I did not take the size of the room, no, sir.

Q. You did not think it was necessary to measure the length of the room, so as to get the place where, the distance between the place where a man would be apt to shoot from, and the hole on the ceiling where the bullet went?

A. The bullet—

Q. Captain, answer my question.

Mr. Price: He should be permitted to answer.

By Mr. Brancato:

Q. You did not think it was necessary, yes or no?

Mr. Price: Oh, I submit——

A. That shot was not fired inside of the room.

By Mr. Brancato:

Q. No. I say you did not think it was necessary for you to get the measurement of that room so as to ascertain the distance between the hole where it went and the place where the shooter might have stood?

A. I measured that with the tape.

[fol. 417] Q. What is the distance?

A. Nineteen feet.

Q. How far is that hole in the ceiling from the partition dividing room "B" with the room right behind the room "B"?

A. It is one foot, three and a half inches.

Q. A foot, three and a half inches, from the partition?

A. Yes, sir. That is, measuring from that to where that there bullet hole struck is one foot three inches.

Q. You say that the hole on the ceiling where the bullet imbedded itself was how many feet or inches away from the partition which divides room "B" with the room immediately behind room "B"?

A. The bullet did not imbed itself in the ceiling.

Q. Where was the last spot where it was before it fell?

A. It struck the partition that you speak of.

Q. It struck the partition that I spoke of?

A. Yes, sir.

Q. What part of the partition did it strike?

A. It was seven inches down from the ceiling.

Q. Seven inches from the ceiling?

A. Yes, sir. And that was one foot three and a half inches from where it struck the ceiling.

Q. Let us get it right. Suppose that this is the ceiling of the room "B" here; you say that the bullet struck the ceiling near the partition, is that right?

A. Between the partition and the window; yes, sir. It is a little over a foot out from the ceiling, out from the partition, a little over a foot out from the partition.

Q. Then it struck the partition somewhere?

A. Yes, sir.

Q. How far was it from where the bullet struck on the partition, from the ceiling?

A. Seven inches.

[fol. 418] Q. So that the bullet went in a sort of diagonal direction from the ceiling to this particular hole where it imbedded itself?

A. Yes, sir, it glanced from the ceiling.

Q. Glanced right down?

A. Yes, sir.

Q. Did you see any marks on that ceiling from the place where the bullet struck the ceiling, tracing it down from the ceiling toward the window of room "B"?

A. I don't understand your question.

Q. Are there any marks or traces of a bullet from the window of room "B"? Look at the photograph, please.

A. Yes.

Q. (Continuing:) To the ceiling, along until you get to the point where the bullet last left the ceiling and struck the partition?

A. No, sir.

Q. There are no marks there at all?

A. I saw no bullet holes, no, sir; no bullet marks.

Q. Did you see any holes there?

A. I did not pay any attention to any other holes at all.

Q. Did you see any streaks as to where a bullet would strike along the ceiling and finally hit the wall?

A. It would be impossible to do that.

Q. You didn't see that?

A. I did not, no, sir.

Q. Did you look for that?

A. No, sir—I did.

Q. Did you look for it?

A. Yes, sir.

Q. You did not measure this hole on the ceiling near the partition, is that right?

A. I measured the hole, yes, sir.

Q. How big is that hole?

A. It is three inches and a half in length and a little over an inch wide.

Q. A hole, is it round?

A. Round?

Q. Yes.

A. A long tear in the plaster.

Q. How big is the tear in the plaster?

A. I mentioned it, three and half inches long and about a little over an inch wide.

[fol. 419] Q. That would indicate to your mind, would it not, that a person firing the bullet would have fired from below somewhere?

A. The indications are that, yes, sir.

Q. That is true, isn't it?

A. It appears that it was some one from below that fired it.

Q. That fired it and hit the ceiling?

A. Yes, sir.

Q. And then you say the bullet shot downward and came down and hit this partition?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. You don't know the length of the room?

A. I did not measure the length of the room.

Q. Just what measurements did you take?

A. I measured it from where the bullet struck the ceiling——

Q. That is, from where you saw the hole?

A. Through the window; through the hole in the window; I placed a stick on the outside and drew the tape tight so as to get the angle from the hole in the ceiling.

Q. You saw the hole in the ceiling; isn't that right?

Mr. Price: I object to that. He has testified at least ten times or more that he did.

The Court: He may answer.

By Mr. Brancato:

Q. You saw a hole or tear in the ceiling?

A. Yes, sir.

Q. You were told before you went down there that that tear was made by a bullet, weren't you?

A. I have examined hundreds of them.

The Court: Just answer the question. Not what you have done, [fol. 420] but what you have been told.

The Witness: Yes, sir.

By Mr. Brancato:

Q. So you went down there with your mind made up that this particular hole that you were going to find was made by a bullet; isn't that right?

A. My opinion is that it was a bullet——

The Court: Just listen to the question. The point is as to whether before you got there at all, you thought you were going to find a bullet hole?

The Witness: Yes, sir.

By Mr. Brancato:

Q. When you were examining that bullet hole, you had in mind the fact that you were told that it was a bullet hole?

A. Not altogether.

Q. Could that hole have been made by a man with a nail of some kind, simply putting a hole there purposely?

A. I don't think so.

Q. You don't think that kind of a hole that you saw there on that ceiling could be made by a man purposely?

A. Not from my experience, no, sir.

Q. Will you please describe in detail this tear or hole, which you say you saw at 138 Union Street today?

A. I have explained the size of it, three and a half inches long, and shows the gouging in and out of the bullet. A hole is in the plaster, a round hole about pretty near half an inch deep in the plaster in the side wall.

Q. So you have a hole three and a half inches on the ceiling?

A. Yes, sir.

Q. You have another hole in the partition about how many inches from the partition?

A. Seven inches.

[fol. 421] Q. Seven from the ceiling?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. You say now that a man could not make a hole three and a half inches in length in the ceiling and seven inches from the ceiling on the partition, is that your testimony now?

Mr. Price: He did not testify to any such thing.

The Court: Whether he did or not, Mr. Brancato is asking him whether that is his testimony.

Mr. Price: I object on the ground that it is incompetent, irrelevant and immaterial and improper.

The Court: Objection overruled.

Mr. Price: Exception.

(The last question was repeated by the reporter.)

A. I do not think the hole could be produced the way it appears to me.

By Mr. Brancato:

Q. You say that a man could not put a hole there like that, a man could not do it; is that your testimony? Now, Captain, be fair.

A. Possibly could be put there in some way, but not to appear in the way that it does to me.

Q. I did not ask you your opinion as to who put it; could not a person have put that hole there, wouldn't it be possible? That is what I am asking you?

A. If you could get it to appear something like that?

Q. To such an extent that it might deceive you or might deceive the average gun expert like you; isn't that right?

A. I have seen a great many of them.

[fol. 422] Q. Now, Captain, I am not testing your knowledge; you are an expert, you have been in the business a long while; I am not impeaching that, but I am asking you a question: Isn't it a fact that a hole like that which you saw to-day might be made by a man and still deceive you or deceive me or deceive any expert?

A. The glass and ceiling might possibly, but the hole in the plaster, I don't think it could.

Q. The hole in the plaster could not be made by a man?

A. From the glance into the side wall; I don't think that it would appear that way.

Q. You mean a man could not put a glance in that hole with a knife or nail?

A. Not to have it appear the way that it does to me.

Q. Of course, in giving those answers to my questions, you are not bearing in mind the fact that you are paid fifty dollars to come here?

A. That never enters into the case with me.

Mr. Price: One of the Jurors, number 5, desires to ask a question.

By Juror Number Five:

Q. The higher up a pistol is held, that is, without any regard to the hole in the window at all, the higher up it is held, wouldn't there be more chance of that bullet striking the ceiling and sliding off into the wall, the higher up it was held?

A. You mean if it should strike——

Q. A glancing blow, the higher up it would be?

The Court: The more nearly parallel of the building?

A. Yes, sir.

Q. The lower it is the more chance of its imbedding itself in the ceiling?

A. Yes, sir.

[fol. 423] By Mr. Brancato:

Q. Now, did you measure the window, room "B," window "B"?

A. The size of it?

Q. Yes.

A. I did not, no, sir.

Q. How high is the hole which you measured in the glass from the bottom of the window?

A. From the ground, do you mean?

Q. No, from the bottom of the window?

A. I can give it to you from the ground.

Q. All right?

A. Six feet eight inches.

Q. And if a man was standing inside the railing right near the window "B" and the man was about five feet eleven with a revolver in his hand, how would he have to point that revolver, in order that the bullet might strike that hole, or cause the hole which you say that you saw at Number 138?

A. Well, in my opinion, my opinion would be that the person that fired that was standing outside of the railing.

Q. Outside of the railing?

A. Yes, sir, a person standing outside of it, with the arm outstretched, would bring it just about.

Q. With the arm outstretched?

A. This way. (Indicating.) I stood a stick up perpendicularly, this way. (Indicating.) It was five feet three inches on the stick from the cellar door; that is, the cellar door in front of the window. It was five feet up, five feet, three inches up on this stick. The pistol must have been held five feet, three inches from that. If a man were on the sidewalk outside, that would put it possibly lower than the cellar door that is inside of the railing.

Q. The distance between the window and the railing is how far?

A. I did not measure it.

Q. Do you say it is four feet?

A. It was four feet ten inches from the window where I stood [fol. 424] the stick up. Then it would possibly be—I did not measure it—but possibly a foot and a half or a little more from that to the railing.

Q. The railing from the window, the side of the window would be about five feet?

A. Yes, sir; I should say about that.

Q. Now, if a man was standing on the outside of that railing with a revolver in his hand, and pointed the revolver, how many feet do you say would cause that hole?

A. Where I had the stick?

Q. How many feet in height from the ground?

A. Five feet three inches from the cellar door, but if a man were standing on the sidewalk, that would be possibly four inches lower, I should think.

Q. About five feet?

A. Five feet—I would say that would be five feet eight.

Q. Now, he would have a revolver in his hands five feet eight inches from the ground?

A. Yes, sir; that would make it about right.

Q. He would fire that revolver and what would be the action of the revolver the moment the trigger was pulled?

A. Why, it would raise.

Q. How much?

A. That would not make any difference in the flight of the bullet. The recoil does not make any difference.

Q. If the revolver is pointed straight?

A. What?

Q. If the revolver is pointed on a straight line with the person who is firing, does not that bullet tend to go straight ahead?

A. Yes, sir.

Q. Isn't that true?

A. Yes, sir; it will go——

Q. It will go straight ahead?

A. In the line with the barrel at that time, yes, sir.

Q. Did you measure the height of that ceiling or of the partition [fol. 425] from the ceiling to the floor?

A. Yes, sir.

Q. How many feet is that?

A. Ten feet, eight and a half inches.

Q. Ten feet?

A. From the ceiling to the floor.

Q. So that when the person who held that revolver in his hand and fired the shot, having the revolver pointed straight, five feet three inches, as you say, and the bullet was fired, the kick brought it up to about five feet four, is not that right?

A. It would not do that.

Q. It could not do that? That is all.

A. It would not do it.

Redirect examination by Mr. Price:

Q. Captain, you examined that room very carefully for other bullet holes, didn't you?

A. Yes, sir.

Q. Did you find any other bullet holes, other than the one in the ceiling?

A. No, sir.

Q. That ricocheted down to the sidewall?

A. Yes, sir.

Q. There is no doubt about that?

A. No.

Q. If I held a pistol in my hand like this, vertically, right up to the ceiling, and if I shot, it is not going to ricochet?

A. No, sir; it is not.

Q. If I stand this way and I hold the pistol this way (Indicating) and it hits the ceiling, it is going to ricochet?

A. It is liable to, if you—if it strikes a soft spot, why it goes in, but my experience where the lathes are, the ceiling gives because the lathes give with it and there is quite a lot of resistance to it.

Q. You have, generally speaking, testified in a good many criminal cases in your experience, haven't you?

A. Yes, sir.

[fol. 426] Q. You have testified in Kings County for the District Attorney's Office a number of times, have you?

A. I have a great many times.

Q. And for the New York District Attorney's office?

A. Yes sir.

Q. Have you testified for the Federal authorities in some cases?

A. Yes, sir; I have.

Q. As a paid expert?

A. Yes, sir.

Q. There is no doubt about it?

A. I have in the Federal Courts as a paid witness but I have never taken a dollar pay from the City in my life.

Q. Even though you were paid by me, if in your judgment the bullet had not entered this window, as you have testified, you would not have said so, would you?

A. I would not.

Q. That is your best judgment, that the point of entrance of that bullet is as you have testified in the corner of that window, is that right?

A. Yes, sir.

Q. It went up into the ceiling and ricocheted into the side wall?

A. Yes, sir.

Q. That is your best judgment?

A. Oh, yes, sir.

Q. Your best judgment is that the bullet could not——

Mr. Brancato: I object. This is not proper redirect examination.

The Court: He is simply giving his direct testimony over again.

Mr. Brancato: I object to it.

By Mr. Price:

Q. Did I ask you on direct examination whether that crack in the window—could be caused by that bullet found in the building?

Mr. Brancato: I object to that as incompetent, irrelevant and immaterial.

[fol. 427] The Court: Objection overruled.

A. My opinion is that it was done by the bullet, yes, sir.

By Mr. Price:

Q. Which broke the corner out of the glass?

A. Yes, sir. You know a low velocity bullet—I don't know what pistol was used here, but my opinion is that this was a pistol of not high velocity.

Q. You could not determine by the hole what caliber of bullet it was?

A. No, sir.

Q. You did not see the bullet?

A. I did not see it.

By Mr. Brancato:

Q. You said before, Captain, that you would have to have the caliber of the pistol to find out about the paper, the tear on that glass, is that right?

A. I did not.

Q. What did you say about the caliber of the pistol, the velocity?

A. Oh, a little while ago?

Q. Yes.

A. I said in my opinion from the glass was that it was a low velocity; if it were a high velocity it would make a clean cut hole in the glass.

Q. What did you say about the paper?

A. The cracks away from the bullet hole. I did not mention paper.

Q. Didn't you say something about the paper being torn just now on your re-direct examination?

A. No, sir; I did not.

Q. Are you sure about that?

A. Positive.

Q. So you can even tell the caliber of the pistol from the crack in the glass?

A. No, sir.

Q. What is there about that crack or hole in the glass which has [fol. 428] anything to do in your opinion about the velocity of the bullet or the caliber of the pistol?

A. I said that it was not a high velocity bullet because if it were it would make a clean cut round hole in the glass with the bevel knocked off on the inside, but a low velocity always cracks away from the bullet hole.

Q. What do you mean by high and low velocity?

A. The swifter travelling bullet is the higher velocity.

Q. What causes high velocity?

A. A powerful pistol.

Q. The caliber of the pistol?

A. Not necessarily. You know that all depends on the ammunition that is being used.

Q. What ammunition would be high velocity and what would be low velocity? You are an expert on guns, you have examined guns, you have examined bullets, tell us about that?

Mr. Wackerman: On behalf of the defendants I represent, I object to this as not proper cross examination.

The Court: Objection overruled.

(The question was repeated by the reporter.)

Mr. Wackerman: I object to the form of the question. He has about a dozen in one.

The Court: Objection overruled.

Mr. Wackerman: Exception.

A. If this were a thirty-eight short loaded with black powder, it would possibly make—I mean crack the glass in that way if the pistol were not in good order.

[fol. 429] By Mr. Brancato:

Q. A thirty-eight short?

A. We have got to take everything in evidence, you know, the condition of your pistol, the ammunition and everything else. If it was a thirty-eight special, with up to date black smokeless powder, it would possibly make a clean cut hole in the glass. If it was a thirty-two short, it would possibly crack the glass if it was old black powder the same as this was.

Q. How about a thirty-two long, what would that do?

A. A thirty-two long, if it were black powder, it might possibly make a clean cut hole.

Q. Black powder?

A. No. I say with smokeless powder, high velocity, it would possibly make a clean cut hole.

Q. With a thirty-two long, would it cause that hole and crack?

A. That all depends on the condition of the pistol and the ammunition.

Q. And the powder?

A. Yes, sir.

Q. What kind of powder would cause that crack in a thirty-two long?

A. If it were black powder and an old cartridge, an old pistol, that would leak between the barrel and the cylinder, if that were the revolver—I don't know what was used—you might get a low velocity that would crack the window in that way.

By Juror Number Twelve:

Q. Have you any way of telling by the bullet hole that you examined today in the window, what length of time that would be there?

A. That would be impossible.

Q. Two or three months?

A. There have been papers put on the glass since putting the paper over it to keep the water out, since then.

[fol. 430] The Court: Is that all with the Captain?

Mr. Price: That is all.

The Court: We will take an adjournment until twelve o'clock tomorrow.

Adjourned to March 16th, 1922, at 12 o'clock.

Brooklyn, N. Y., March 16, 1922.—12:30 o'clock p. m.

Before Hon. Garvin, J., and a Jury

Appearances: Same as heretofore.

SEBASTINO FABATA, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your business?

A. Photographer.

Q. How long have you been a photographer in Brooklyn?

Mr. Kesselman: I think we will require an interpreter for this witness.

By the Court:

Q. How long have you lived in this country?

A. Seventeen years.

Q. Seventeen years. You can speak English?

A. Not very much.

The Court: Well, we do not have to have very much from him.

Mr. Price: Do the best that you can.

By Mr. Price:

Q. How long have you been a photographer?

A. Seventeen years.

[fol. 431] Q. That is seventeen years in this country?

A. Yes, sir.

Q. Were you a photographer before you came to this country; were you a photographer in Italy?

A. Yes, sir.

Q. How long were you a photographer in Italy?

A. Sixteen years more.

Q. I show you this paper, Defendant's Exhibit A, did you make this photograph?

A. Yes, sir.

Q. When did you make the photograph?

A. The 18th of January.

Q. The 18th of January, 1922?

A. Yes, sir.

Q. Is this a correct representation of the front of the building, 138 Union Street, on the 18th day of January, 1922?

A. Yes, sir.

Q. Correct?

A. Yes, sir.

Q. I show you this paper, Defendant's Exhibit B for identification?

A. Yes, sir.

Q. Showing a window in No. 138 Union Street?

A. Yes, sir.

Q. Did you make Defendant's Exhibit B, at the same time?

A. Yes, sir.

Q. And was that a correct representation of the premises 138 Union Street at that time?

A. Yes, sir.

Mr. Price: I will offer this for identification so that I can refer to it.

Photograph marked Defendant's Exhibit C for identification.

By Mr. Price:

Q. I show you this paper marked Defendant's Exhibit C for identification, did you take this photograph?

A. Yes, sir.

Q. On the 18th day of January, 1922?

A. Yes, sir.

[fol. 432] Q. Does that correctly represent the window leading into the kitchen on January 18th, 1922?

A. Yes, sir.

Q. Now, at the time that you took the picture, Defendant's Exhibit A, was there anything near this window which is marked "B"?

A. Yes, this is "A" and this is "B." A small cart.

Q. A small cart?

A. (Continuing:) Was in front of the window.

Q. In front of the window "B"?

A. Yes, sir.

Q. Before you took the photograph you took the cart away; is that it?

A. Yes, sir.

Q. Did you at my request go down to the premises 138 Union Street?

A. What did you say?

Q. Did you go down there again after that day?

A. Yes, sir; this morning.

Q. Did you take another photograph there this morning?

A. Another one this morning, yes.

Q. Did you find the cart there?

A. I have it here.

Q. I say did you find the cart there?

A. The same as last time.

Q. That is, you put another cart—

Mr. Brancato: I object to that.

By Mr. Price:

Q. (Continuing:) Had a cart in front of 138 Union Street in front of window "B" this morning?

A. Yes, sir.

Q. What did you do with that cart this morning?

A. I put it just at the window this morning, just like the last time, the last time I take it off the cart, I take plain picture.

Q. That is, you put the cart you found there this morning in the [fol. 433] same position that you found it on the 18th day of January, 1922?

A. Yes, sir.

Q. After you put the cart in that position, did you take a photograph?

A. Yes, sir.

Q. Have you that photograph with you?

A. Yes, sir, I have.

Q. Will you please let me have it?

A. (Witness hands photograph to defendant's counsel.)

Mr. Price: Will you please mark this for identification, Mr. Scott?

Photograph marked Defendant's Exhibit D for identification.

By Mr. Price:

Q. I show you this paper, Defendant's Exhibit D for identification, and ask you if that push cart was placed in the same position that you found it on the 18th day of January, 1922?

A. Yes, sir; it is the same.

Q. That correctly represents the window "B," with the push cart in front of it, the same as it was on the 18th day of January, 1922?

A. Yes, sir; the same.

Q. Has there been any change in the building or the windows at 138 Union Street, since the 18th day of January, 1922?

Mr. Brancato: I object to the question on the ground that this man is incompetent; he does not know; he has not been there every day.

The Court: What he knows, you can ask him.

[fol. 434] By Mr. Price:

Q. Do you know of any change in the appearance of this building, 138 Union Street, since you took the photograph of it on the 18th day of January, 1922?

A. All the same.

Q. It is the same, you say?

A. Yes, sir; the same.

Mr. Price: That is all.

Cross-examination by Mr. Brancato:

Q. When did you take those photographs?

A. The 18th of January.

Q. How can you place that it was the 18th day of January—how do you remember that day?

A. Because I got it in the book.

Q. Where is your book?

A. (Witness refers to book.)

Q. May I see it?

A. (Witness hands counsel book.)

Q. What is this book which you have just given me?

A. I remember from book.

Q. What kind of a book?

A. It has got them all along, a book, finished the old book—I don't understand very much English.

Q. What is it, a receipt book?

A. A receipt book, yes.

Q. That is, when somebody pays you for work which you have done, you give them a receipt?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. And this is the stub, is that right?

A. Yes, sir.

Q. Do you know what I mean by a "stub"?

A. When a customer come, give it for a receipt.

Q. When a customer comes and pays you for a photograph, you [fol. 435] give them a receipt?

A. Yes, sir.

Q. You tear it off here and give them a receipt?

A. Yes, sir.

Q. The stub remains with you; is that right?

A. All right.

Q. So this is the book which you keep in your office showing the stubs of receipts which you have given out?

A. Yes, sir.

Q. That is right, is it?

A. Yes.

Q. Where is your place of business?

A. 119 Degraw Street.

Q. Now, you say that you took this photograph on the 18th of this month; is that right?

A. In the month of January.

Q. Of the month of January?

A. Yes, sir.

Q. On the 18th of January somebody paid you for these photographs?

A. They came the same night, the night of the 17th, Frank Agnello——

Q. Frank Agnello came——

Mr. Price: Let him answer.

By Mr. Brancato:

Q. Frank Agnello came?

A. Yes.

Q. Which one of these is Frank Agnello?

A. This one (indicating).

Mr. Brancato: Please don't you indicate who it is; do not indicate at all.

Mr. Price: I submit that is improper.

Mr. Brancato: He has no right to point.

Mr. Price: The witness pointed right at him.

Mr. Brancato: I will ask the Court to instruct him not to do any pointing.

The Court: All right.

[fol. 436] By Mr. Brancato:

Q. Which is Frank Agnello?

A. This fellow.

The Court: Get down off the stand and go and put your hand on him.

The Witness: (The witness does as requested.)

Mr. Price: For the record, I will state that the witness walked from the witness stand down to the railing where the defendant Frank Agnello is seated and placed his hand on his shoulder.

The Court: Let it so appear.

By Mr. Brancato:

Q. What time on the 17th was it that Frank Agnello came to your office?

A. In the night.

Q. What time?

A. May be six or half past six.

Q. Are you sure about that?

A. Sure.

Q. How much did he give you.

A. Nine dollars; two dollars deposit. He gave me seven dollars balance.

Q. That is, Frank Agnello?

A. Yes, sir.

Q. Did he pay you any more since? Has he paid you any more since that time?

A. No, he paid just two dollars, he paid.

Q. Was anybody with Frank Agnello on the 17th about six o'clock when he came to your office and asked you to take a photograph, was anybody with him?

A. No, nobody.

Q. He was alone, was he?

A. He was alone.

Q. Solo?

A. Yes, sir.

Q. Was he alone?

A. Yes, sir.

Q. He came to your office all alone, all by himself?

A. Yes, sir.

[fol. 437] Q. What did he say to you?

A. Said just—Frank give me——

Q. What did he say?

Mr. Price: Let him answer.

A. He said, "Take a picture 119—188 Union *Union* Street.

By Mr. Brancato:

Q. 188 Union Street, is that what he said?

Mr. Price: I submit we ought to have an interpreter for this man?

The Court: Is that what he said?

The Witness: I don't understand.

Mr. Brancato: I would like to have an interpreter.

The Court: Get one, gentlemen, if it is satisfactory to both sides.

(A. O. Tucci, who had previously been sworn as an interpreter in the case, now acting as interpreter.)

By Mr. Brancato:

Q. On January 17th when you say Frank Agnello called at your office, what time of the day or night was it that he came?

A. About six or half past six.

Q. And who was with him when he came?

A. He was alone.

Q. Was his brother there with him?

A. No, sir; no one.

Q. Did you see his brother that night?

A. No, sir.

Q. Did you see him the next day?

A. No, sir.

Q. Did you see Pace the next day?

A. No, sir.

[fol. 438] Q. Do you know who Pace is?

A. I don't know.

Q. Why did you say that you did not see him if you do not know who I mean?

Mr. Price: I object to the form of the question on the ground that it is argumentative.

The Court: Objection overruled.

Mr. Price: I submit that it is improper as to form. I except.

A. The only person I saw was Frank. That is all. I cannot say anything else but "No" when I do not know a person.

By Mr. Brancato:

Q. You know Frank, don't you?

A. Yes, sir.

Q. Do you know his family?

A. I see them, but I have never had any dealings with them.

Q. You know his brother Tom?

A. Now, I know him.

Q. Did you know him at the time you made these photographs?

A. No, I did not.

Q. When you took this picture of the window, was Frank and Tom at the place, 138 Union Street?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial, and on the further ground that it is not predicated on the evidence in this case.

Mr. Brancato: Testing his credibility, if the Court please.

The Court: Objection overruled.

Mr. Price: I except.

A. Frank only.

[fol. 439] By Mr. Brancato:

Q. Anybody else around?

A. The people that were looking there.

Q. You are sure that was the 17th of January?

A. That I made the receipt on the 17th; the photograph was taken on the 18th.

Mr. Brancato: That is all.

Mr. Price: Let me have that book, please.

(Mr. Brancato hands book to counsel.)

By Mr. Price:

Q. May I remove this one stub from your book, No. 1891?

A. Yes. You can keep the whole book; they don't want to use it any more at all.

Mr. Price: I do not want it. There is your book (handing book to witness). I offer this page of the book in evidence.

Mr. Brancato: Objected to as incompetent, irrelevant and immaterial, a self serving declaration.

The Court: On what theory is it competent?

Mr. Price: Mr. Brancato asked him all about it, your Honor.

Mr. Brancato: I asked him about what?

Mr. Price: You asked him about the receipt book; all about it.

Mr. Brancato: He has given the answers and the answers are on the record.

Mr. Price: I submit that it is competent evidence.

The Court: Objection sustained.

Mr. Price: I except, and offer it for identification.

The Court: Mark it for identification.

[fol. 440] (The paper was marked Exhibit E for identification.)

Mr. Price: That is all. May the witness leave?

The Court: He may.

MARY CENTORINO, called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. Where do you live?

A. 172 Columbia Street.

Q. You are the wife of Antonio Centorino?

A. Yes, sir.

Q. One of the defendants in this case?

A. Yes, sir.

Q. Do you remember the 16th day of January, 1922?

A. Yes, sir.

Q. Were you in the neighborhood of 172 Columbia Street, your home, on the morning of that day?

A. Yes, sir.

Q. About what time?

A. About eleven o'clock.

Mr. Price: Stand up Nunzio.

Mr. Brancato: Wait a moment. Stand up nothing.

The Court: Yes, if there is going to be an identification, it cannot be done in that way.

Mr. Brancato: Do not tell her who the man is.

By Mr. Price:

Q. Do you remember I had you brought into Court yesterday?

A. Yes, sir.

[fol. 441] Q Did you see the man who was on the witness stand at that time?

A. Yes, sir.

Q. Do you see him here in the court room now?

A. Yes, sir.

Q. Where is he? Go down and point him out.

The Court: Yes, go right down in the court room and put your hand on his shoulder.

(The witness does as requested.)

Mr. Price: I want the record to indicate that the witness walked down and put her hand on the shoulder of Nunzio Dispenza; is that correct, sir?

The Court: Correct.

By Mr. Price:

Q. You say that you saw him on the 16th of January at about eleven in the morning?

A. Yes, sir.

Q. Will you please tell the jury in your own way everything that you saw at that time?

A. Yes, sir; I went out at eleven o'clock on Monday morning, because I did not go to work; I did not feel good.

Q. Never mind that. Just tell us what you saw?

A. So when I came out of the butcher shop, I found my husband in my door, so he said to me, "I was looking for you, where were you?"

Q. Never mind what your husband said. Please tell me what you saw?

A. I was talking with my husband and I seen a man coming by, so he said to my husband in Italian, "Just a minute, I want to tell you a word."

Q. Who was that man?

A. That was Nunzio.

Q. The man that you have just pointed out?

A. Yes, sir.

[fol. 442] Q. Go ahead.

A. So he got a few steps away from me. He started to talk to my husband, so I don't know what they said, because I was not listening to their business, so I seen that he gave a package to my husband.

Q. How big was that package?

A. So big, so wide (indicating).

Q. Describe that.

Mr. Price: How long would your Honor say; about a foot?

The Court: I would suppose that. Your judgment is better than mine, because I did not see it at the same angle as you did.

Mr. Brancato: Fourteen inches.

Mr. Price: If you want it, I will concede fourteen inches.

By Mr. Price:

Q. How tall was the package?

A. So tall (indicating).

Q. Six inches?

Mr. Brancato: Eight inches.

Mr. Price: All right.

A. It was wrapped in newspaper, so he was speaking with my husband; I was not listening—so at the time that he was about to go away, he said to my husband, "I will see you tonight" He went away—

By the Court:

Q. What became of the package?

A. He gave it to my husband.

Q. What did you- husband do with it?

A. My husband took it. I was standing there with him—

[fol. 443] Q. After your husband took it, where did he go?

A. He went upstairs with me.

Q. In the house?

A. In the house with me.

Q. Did you see what he did with the package?

A. Yes, he took the package and put it where my children sleep. I said to him, "Tony, what is in that package?"

Mr. Brancato: I object to that and ask that it be stricken out.

The Court: Strike it out.

By Mr. Price:

Q. While you were standing there did anybody come and talk to you?

A. After that man left?

Q. No, while that man was there?

A. No—

Q. Who is your employer?

A. That is Joe Blandi, the man that I work for.

Q. Did you see him there that morning?

A. Yes, sir.

Q. Did you talk to him?

A. After the man left, I talked to him.

Mr. Price: Your witness.

Cross-examination by Mr. Brancato:

Q. What is this man, Joe what?

A. Joe Blandi.

The Court: I think we won't take up the cross examination until after lunch.

(A recess was taken until two o'clock.)

[fol. 444]

After Recess, 2 o'clock p. m.

MARY CENTORINO resumes the stand for further cross examination.

Cross-examination by Mr. Brancato (continued):

Q. Where is Joe Blandi's place of business?

A. 460 Hicks Street.

Q. What kind of a business is that?

A. A knee pants shop.

Q. That is, you work as a seamstress, making knee pants?

A. An operator on knee pants.

Q. How long have you been working for Blandi?

A. One year.

Q. Working steadily there?

A. Yes, steadily.

Q. Work every day?

A. When there is work; when there is no work, I will be home.

Q. You say you were not working on the 16th?

A. No, sir.

Q. When was the last day that you worked before the 16th?

A. Saturday.

Q. That was the 14th?

A. A half day.

Q. You worked a half a day on Sunday?

A. On Saturday.

Q. You did not work Sunday?

A. No, never work on Sunday.

Q. Work there Friday the 13th?

A. That whole week long.

Q. What time do you go to work in the morning?

A. Eight.

Q. Would you come home for lunch?

A. Yes, sir.

Q. About when?

A. Twelve.

Q. Go back to work at one?

A. Ten to one, a quarter to one.

Q. Work until what time?

A. Six.

[fol. 445] Q. You were not working on the 16th?

A. No, sir.

Q. What was the matter?

A. I did not feel good.

Q. When did you again go to work after the 16th?

A. Well, after my husband came out on bail.

Q. When was that?

A. The 21st or 22nd of January.

Q. The 21st or 22nd of January?

A. Yes, sir.

Q. You went back to work then?

A. Yes, sir.

Q. From the time your husband was arrested until the 21st or 22nd, you did not do any work?

A. Nothing.

Q. That was because you were working around to get bail for your husband, is that right?

A. Yes, sir.

Q. You say that you know that man Nunzio?

A. Yes, sir.

Q. Who told you his name?

A. The lawyer said his name; I did not know his name.

Q. When did the lawyer tell you his name?

A. When we went to talk to the lawyer.

Q. When?

A. The 23rd or 22nd of January.

Q. The lawyer told you what?

A. His name was—in English he said, he did not say any Italian.

Q. What name did he give you?

A. I don't remember the name in English.

Q. You don't remember the name that he gave you? Just try and think a moment. What name was given to you on the 22nd or 23rd?

A. I don't remember it; he said it in English.

Q. What lawyer was it?

A. Mr. Price.

Q. Just what was said at the time that Mr. Price gave you the [fol. 446] name in English?

A. Well, he asked me everything; I answered him what he asked me about.

Q. Then that was the first time that you knew this man's name was Nunzio?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Have you spoken to anybody about Nunzio, since the 22nd?

A. No, sir.

Q. You have not?

A. No, sir.

Q. You have been out in the hall here all this week?

A. No, sir; yesterday was the first day.

Q. Yesterday was the first day that you came in Court?

A. Yes, sir.

Q. You were outside with a number of people?

A. Yes, sir.

Q. Did anybody mention Nunzio's name to you?

A. No, sir.

Q. Did you speak to anybody about the case?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You did not speak with anybody about this case outside?

A. No, sir.

Q. That is true?

A. Yes, sir.

Q. You did not speak with your friends outside?

A. No, sir.

Q. Have you got many friends outside waiting now?

A. I don't know how many there are.

Q. How many are there about?

A. I cannot figure it out; I did not count them.

Q. Are there as many as that, that you cannot figure them?

A. If I don't count them, how can I say.

Q. About how many?

A. Oh, twelve or fifteen, I did not count them.

Q. Your best judgment is twelve or fifteen?

A. Twelve or fifteen.

[fol. 447] Q. It might be more or less?

A. Yes, sir.

Q. There are around twelve or fifteen of your friends?

A. Yes, sir.

Q. What are their names?

A. I don't know all of their names.

Q. Give us their names?

A. I know the boss I work for, Joe Blandi. The rest of the names I don't know.

Q. You know Joe Blandi?

A. Because I work for him.

Q. Was Joe Blandi outside yesterday?

A. No, he came in today.

Q. Who told him to come in today?

A. The lawyer said to take all the witnesses today.

Q. Who told Joe Blandi to come in here to Court today?

A. I 'phoned for him.

Q. What did you say to him?

A. I told him that he had to be at Court.

Q. What does Joe Blandi do in the shop?

A. He is the boss, he estimates the work, prepares the work for the operators.

Q. He goes to work every day, does he?

A. Yes, sir.

Q. What time does he go to lunch, if you know?

A. We don't know. He eats in there sometimes.

Q. You say that you saw Nunzio about 11 o'clock on the 16th of January?

A. Yes, sir; it was on Monday.

Q. That was in front of your house?

A. Right in front of my door.

Q. Of 172?

A. Columbia Street.

Q. Does your husband do any work?

A. Yes, sir; he is a presser.

Q. Where does he work?

A. 37 to 39 Morrell Street.

Q. When did he work there last?

[fol. 448] A. He was working last there about three days before he got arrested.

Q. Three days before?

A. The arrest.

Q. Did he work steadily before that time?

A. Yes, sir.

Q. He did?

A. Yes, sir.

Q. Working every day?

A. Yes, sir.

Q. Three days before the arrest he worked that week?

A. Yes, sir.

Q. And the week before that?

A. Yes, sir.

Q. Every day?

A. Yes, sir.

Q. What time did he go to work?

A. He leaves the house at half past six in the morning.

Q. Then what? He leaves there about a quarter to eight, and what time does he come back?

A. In the night at seven, ten after seven, a quarter after seven.

Q. You are home when he comes in?

A. Yes, sir.

Q. Do you both work out during the day?

A. Yes, sir.

Q. Except on the 16th, when you both happened to be in front of the door?

A. (No answer.)

Q. Just about how far were you from the door?

A. About ten inches away from him.

Q. Where had you been before you got to the door?

A. I was out. I told you I went shopping.

Q. You were out shopping? Where did you go?

A. Across the street to the butchers.

Q. Did you go to any other place before that?

A. No, sir.

Q. Before you went to the butcher, where had you been?

A. Inside.

Q. By "inside" you mean what?

A. In the house.

Q. In your own house?

A. In my own house.

[fol. 449] Q. You left your house——

A. To go across to the butchers.

Q. Where was your husband?

A. I don't know where my husband was that morning. When I came out of the butcher, then I seen him near my door.

Q. And you walked over to him?

A. Yes, sir, I walked over to him.

Q. And you started talking?

A. Yes, sir.

Q. Did you go upstairs then?

A. After, we went up stairs.

Q. What were you talking about with your husband at the time that you say you met him?

A. He asked me what I bought for dinner at twelve o'clock. I told him that I bought some salami, so he said, "How do you feel that you did not go to work this morning?" I said, "I feel some headaches, I am not sure if I am going to work or not."

Q. And then this man came?

A. Yes, sir.

Q. Where did the man come from?

A. He came from Degraw Street.

Q. Degraw Street?

A. Yes, sir.

Q. In that direction?

A. From that direction.

Q. What did he do when he came there?

A. When he came there near my husband, he said in Italian, "Just a minute, I must tell you a word."

Q. In Italian?

A. An Italian.

Q. To whom were you speaking?

A. To my husband.

Q. How far was he from your husband at the time that he spoke?

A. About two feet away from me.

Q. What did your husband do?

A. Then I seen this man——

[fol. 450] Q. Then what did your husband do?

A. He was talking to him.

Q. When Nunzio said to your husband, "I want to speak a word to you, what did your husband do?

A. My husband went——

Q. After Nunzio said, "I want to speak a word with you," what did your husband do?

A. My husband went and left me.

Q. Left you and went over to Nunzio?

A. He went to him.

Q. What they said, you do not know?

A. No, I did not listen to them.

Q. Then you say that Nunzio gave him this package?

A. Yes, sir.

Q. This package your husband took?

A. Yes, sir.

Q. How long did they talk together?

A. About five minutes.

Q. You did not hear what was said between them, is that right?

A. Yes, sir.

Q. And you say—did you say before on cross examination that your husband said something?

A. No, he said to my husband something.

Q. Didn't you just say that you did not hear what was said?

A. At last I heard the last few words, at the last.

Q. You did hear something. Before you said you did not hear something and now you say you heard something?

A. Heard about what they were talking—I did not hear. I heard the last few words. He said, "I will see you tonight."

Q. You heard that?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. Those were the last few words?

A. Those were the last few words.

[fol. 451] Q. You did not hear the rest of the conversation?

A. No.

Q. You did not pay any attention to that; isn't that right?

A. No, sir.

Q. But you paid attention to the last few words, "I will see you tonight?"

A. Yes.

Q. That is right?

A. Yes.

Q. Then you and your husband went upstairs?

A. No, he left and my boss came over to me.

Q. Your boss came over to you?

A. Yes.

Q. Where was your boss?

A. He was coming, may be from the shop; I did not see from which direction.

Q. Oh, he just happened to be there, your boss?

A. Yes, sir.

Q. He is a friend of yours?

A. No.

Q. You are working for him?

A. Well, he is the boss, but he is not a friend of mine.

Q. Your boss came over to you at that time?

A. Yes, sir.

Q. Did anybody else come over?

A. No, sir.

Q. Your boss was the only man that came over to you and talked to you at that time?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. Anybody else talk to your husband?

A. No, sir.

Q. How long did you speak with the boss?

A. He spoke to me about ten minutes and then went away.

Q. During those ten minutes that you were speaking to your boss, where was your husband?

A. With me.

Q. So you were both talking to the boss?

A. Yes, sir.

[fol. 452] Q. And when you got through talking with your boss, you and your husband went up to your house?

A. Yes, sir, up to the house.

Q. And your husband took that package which you say he had gotten from Nunzio; is that right?

A. Yes, sir, that is right.

Q. Where did he put it?

A. We go up; we went upstairs, the both of us, and put it away.

Q. Where?

A. Where my children sleep.

Q. What?

A. In the bed room of the children.

Q. In the children's bed room?

A. I have a little closet in there.

Q. Did he put it in the closet?

A. Yes, sir.

Q. Is this closet where the children's bed room is he placed this package in there?

A. Yes, sir.

Q. Did he open it?

A. No.

Q. So you don't know what was in the package?

A. No, sir.

Q. You did not see it?

(No answer.)

Q. So you say your husband put this package in the closet in your children's bed room?

A. Yes, sir.

Q. When did you see the package again?

A. After my husband went away.

Q. When?

A.. He went away, it was after half past twelve, and I wanted to see what was in that newspaper, so I opened the package and I seen small blue packages, so I did not open the packages, but I seen them. I wrapped them up the same way and so I left them there and I went to work.

Q. Then you went to work?

A. At one o'clock.

Q. Your illness was over at one o'clock?

A. The boss came to call me. I had to go.

Q. So your illness was over at one o'clock and you were able to go to work?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

[fol. 453] Q. You did go to work at one o'clock?

A. Yes, sir, I did.

Q. At what time did you open that package?

A. After my husband left.

Q. What time did you open the package?

A. It was around twenty minutes to one.

Q. Twenty minutes to one?

A. My husband left at half past twelve.

Q. So you waited until just before one o'clock, just before you went to work, twenty minutes time and your first thought was to go and open that package, is that right?

A. Yes, sir.

Q. You saw some blue packages inside?

A. Yes, sir.

Q. When did you again see the packages?

A. I did not look at them any more.

Q. You never saw them again after that?

A. My husband came in the night and took them.

Q. What time did he come and take them?

A. Around half past eight in the night.

Q. Did you see him take them out there?

A. When he took the newspaper, packed the way it was.

Q. Were you in the house at the time?

A. Yes, sir; I was.

Q. You saw him go to the children's closet and take them?

A. And take them.

Q. You saw him go to the closet and take the package out?

A. Yes, sir.

Q. You did not tell him that you opened that package?

A. No, sir.

Q. You did not tell him that?

A. No, sir.

Q. Had you ever seen any of those blue packages or black packages like that in your house before?

A. No, sir.

Q. That was the first time that you saw them?

A. Yes, sir.

[fol. 454] Q. That is as true as everything else you have said this morning?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial, argumentative and improper.

Mr. Price: Exception.

(The last question was repeated to the witness by the reporter).

A. Yes, sir.

By Mr. Brancato:

Q. Now, did your husband say anything?

A. No, sir, he did not.

Q. What am I going to ask you?

M. Price: You asked, "Did her husband ask her anything?"

Mr. Brancato: When, where, how? Let me get a chance to finish my question. Don't say "No" without getting a question first.

Mr. Price: I submit that is improper. He asked her a question.

Mr. Brancato: I did not ask her—

The Court: Go on with the next question, please, Mr. Brancato.

By Mr. Brancato:

Q. Did your husband say anything to you at the time he took that package out at half past eight?

A. No, sir, he did not.

Q. Did he say not a word at all?

A. No, sir.

Q. He did not?

A. No, sir.

Q. Did he come in the house?

A. Yes, sir.

Q. He took that package from the closet and walked out again without saying a word to you?

A. Yes, sir.

[fol. 455] Q. And who was home at that time?

A. My children and me.

Q. Just your children and yourself?

A. And me, yes, sir.

Q. When did you again see your husband after half past eight?

A. No more. When he came out on bail.

Q. When he came out on bail?

A. When he came out on bail, yes, sir.

Q. The night that your husband was arrested, the 16th, didn't some officers come to your house?

A. Yes, sir.

Q. And search around the house?

Mr. Price: Wait a minute. I object to it as incompetent, irrelevant and immaterial; if they did, they had no right to do so without a search warrant.

Mr. Brancato: I don't know about that.

A. They came in like a bunch of burglars—

The Court: I don't think that is competent to hear what the police officers did or the narcotic agents.

Mr. Brancato: For the purpose of testing the credibility of this witness.

The Court: That is not as to credibility.

Mr. Brancato: It is not a question of anything being found there. She said something—

The Court: For that purpose it will be allowed.

Mr. Price: I except.

By Mr. Brancato:

Q. Do you remember when the officer came there?

A. Yes, sir.

[fol. 456] Mr. Brancato: Officer Manning stand up, if you please.

(Officer Manning does as requested).

By Mr. Brancato:

Q. Did you see him there that night? (Indicating Officer Manning).

A. Yes, sir.

Q. Did they ask you some questions?

A. No, sir.

Q. No questions at all?

A. No.

Q. Did you speak with them?

A. Yes, they just said, "What is your name?"

Mr. Price: No answer yes or no.

Mr. Brancato: Yes.

By Mr. Brancato:

Q. You spoke with them?

A. Yes, sir.

Q. They spoke with you?

A. Yes, sir.

Q. They asked you about your husband, didn't they?

Mr. Price: I object to it as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: I except.

By Mr. Brancato:

Q. Did you say, "I don't know, because I have been working all day." Didn't you say that to them?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Are you sure about that?

A. Sure.

Q. Didn't you say that you had been working that day and you did not know anything about your husband?

A. No, sir.

Q. How long were they in your house that night?

A. About an hour.

[fol. 457] Q. Now, do you know Pace?

A. Yes, sir.

Q. Do you know him pretty well?

A. Not from friendship; not pretty well or friendship.

Q. Not very well?

A. No.

Q. How well do you know him?

A. I see him in the street, but we have no friendship with him.

Q. Do you see him in the street every day?

A. Every day, sure.

Q. He lives just opposite your house, doesn't he?

A. No, sir.

Q. What number do you live at?

A. I live at No. 172.

† Q. He lives at No. 167?

A. He lives between Degraw and Sackett, but I don't remember no number.

Q. A grocery store there?

A. No, sir; not where he lives.

Q. Who lives in the grocery store?

A. The two other fellows.

Q. The Agnello brothers?

A. Yes, sir.

Q. They live in the grocery store, in the back of the grocery store?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Do you ever deal in there?

A. No, sir.

Q. Do you ever see Pace in there?

A. No, sir.

Q. Your husband goes there once in a while?

A. Yes, sir.

Q. In fact, he goes there quite often, doesn't he?

A. No, sir.

Q. How often does he go there?

Mr. Price: I object to that as incompetent, irrelevant and immaterial.

A. I cannot count how many times my husband goes in there.

[fol. 458] Mr. Brancato: All right. I will take that answer.

By Mr. Brancato:

Q. You know Alba, don't you?

A. Yes, sir.

Q. You know him pretty well?

A. Yes, sir; I know him pretty well.

Q. You have often seen them all together?

A. Yes, sir.

By Mr. Price:

Q. What do you mean that you have often seen them all together?

Mr. Brancato: I object to the question.

Mr. Price: This is re-direct.

The Court: Objection overruled.

By Mr. Price:

Q. What do you mean that you see them all together? Did you ever see these five defendants before in your life?

A. No, sir; not the whole five.

Q. When you said that you have seen them all together, what did you mean?

A. The old man and my husband.

Q. Alba?

A. Yes, sir.

Q. They are great friends, aren't they?

A. Yes, the old man is Godfather to my husband.

+ Q. The old man Alba is Godfather of your husband, is that right?

A. Yes, sir.

Mr. Price: That is all.

Mr. Brancato: That is all.

[fol. 459] GEORGE S. JUDGE, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. Where do you live?

A. 557 East 7th Street, Brooklyn, New York.

Q. You are employed, are you, by the Kings County Detective Bureau?

A. Yes, sir.

Q. Did you, at my request, go to the premises 198 Macdougall Street in the Borough of Brooklyn, County of Kings?

A. Yes, sir.

Q. When did you go there?

A. Yesterday at 3:15.

Q. Will you please describe to these gentlemen of the jury what kind of a building 198 Macdougall Street, Brooklyn, is?

A. It is a four story flat building, eight tenants in the building.

Q. Is it brick or frame?

A. Brick.

Q. Did you go all through that building at my request, looking for a man by the name of Nunzio Dispenza?

A. Yes, sir; I did.

Q. Was any such person living in that house yesterday?

A. No such person.

Q. Did you inquire in the neighborhood for Nunzio Dispenza?

A. I canvassed all the tradesmen in the neighborhood.

Q. Did you try to ascertain whether Nunzio Dispenza had ever lived in that neighborhood?

A. Yes, sir; I did.

Q. What was your information on that?

A. I learned that he was not known in that neighborhood.

Mr. Brancato: I object to that as calling for a conclusion. Let him state to whom he spoke and what was said.

The Court: Yes.

[fol. 460] By Mr. Price:

Q. Did you look at the bells in that house?

A. Yes, sir.

Mr. Brancato: I object to him leading the witness, let him tell what he did.

The Court: Yes, you had better tell all the efforts that you made.

A. I arrived at No. 198 Macdougall Street. The first thing I did was to look at the bells. I found that there was no such name there. Then I went to the top floor and worked down, interviewed every person in that house, every tenant. No such name lived there. I then went to the nearby stores in the neighborhood within a radius of four blocks on each side, north and south, and interviewed the storekeepers; various storekeepers. Nobody knew this man. There was a real estate store on the corner of Macdougall Street and Hopkinson Avenue. He is there twenty years and he never heard of this man.

By Mr. Price:

Q. Did you go into any of the other houses around 198 Macdougall?

A. I went to No. 200, and went to the janitor. The janitor never heard of this man. I went to 196, 194, 192 and 219.

The Court: Will you give way a minute?

Mr. Price: Yes, sir.

(Court and counsel confer.)

By Mr. Price:

Q. Mr. Judge, did you talk to the janitor of 198 Macdougall Street?

A. Yes.

Q. What did you say to him and what did he say to you?

A. I asked for Mr. "Nunzio" and "Dispenza," and he said he [fol. 461] never heard of that name, there was nobody by that name living in the house. I said, "Who lived on the top floor left?" He said there was a Mrs. Walsh. I went to the top floor left. Mrs. Walsh said she never heard of that name. I then went to the next door, No. 200—

Q. (Interrupting.) Let me interrupt at this point. When you spoke to the janitor, did you ask him how long he had been janitor of that building?

A. No, sir; I did not.

Q. You did not?

A. No, sir.

Q. Well, did you talk to every tenant in that building?

A. Every tenant, yes, sir.

Q. How many tenants on each floor?

A. Two tenants on each floor.

Q. Each of the four floors?

A. Yes, sir.

Q. This is not a three-story house with six families, is it?

A. No, a four story.

Q. What is the name of the real estate man that you spoke to?

A. Well, I did not get his name. I did not see any name on his place of business. He is what——

Q. Will you tell me the conversation that you had with him and where his place of business is?

A. I asked this man if he knew "Andy" Dispenza. He said, "No." So I said, "Did you ever hear of anybody of that name living in the vicinity here?" He said, "No, I never did."

Q. Did you also ask him about "Nunzio Dispenza?"

A. I also did, yes.

Q. What did he say to that?

A. He said he never heard of that name.

Q. So you have been unable to locate him at that address at all?

A. Yes.

Mr. Price: Your witness.

[fol. 462] Mr. Brancato: No cross.

Juryman Number Twelve: May I ask a question?

The Court: Yes.

By Juryman Number Twelve:

Q. Did you find every tenant home throughout the house, on every floor?

A. Yes, sir.

Q. Somebody in every apartment?

A. Yes, sir.

Mr. Price: Now, as I understand it, I asked your Honor yesterday to permit me to further cross-examine Nunzio Dispenza, and if there is no misunderstanding about that, I now ask your Honor, in the interests of justice to permit me to further cross-examine him.

The Court: On what point?

Mr. Price: On the point of his address only.

Mr. Brancato: If the Court please——

The Court: Mr. Brancato, now, perhaps this will obviate all difficulties in the matter. The Court observes Nunzio in the court room now, observes Dispenza in the court room now and states to Dispenza that an employee of a detective bureau has just testified under oath that he has within twenty-four hours visited the address at which Nunzio Dispenza said he lived. He has testified that no such person is known there. If Dispenza desires to take the witness stand and give

any explanation with respect to the possibility of this last witness being mistaken, why, he may have that opportunity now. It seems to me the jury will fully understand that if he does not take the stand [fol. 463] that he has not any explanation to make of that part of his testimony? Do you want to testify in the matter?

Nunzio Dispenza: Yes, sir.

The Court: All right, come up.

NUNZIO DISPENZA, recalled.

The Court: Dispenza, a witness, George S. Judge, has just testified that within twenty-four hours he has called at No. 198 MacDougal Street, Brooklyn, and has inquired for you there and was unable to locate you. He testified that he could not find any trace of you at the address at which you testified that you lived. Now, do you desire to make any statement in connection with that testimony?

The Witness: I do.

The Court: Please make it to the jury.

The Witness: I gave that address yesterday while I was sitting on the stand here, the big Agnello brother was bowing his head to me, as much as to say, "I will fix you."

Mr. Kesselman: No, no.

Mr. Price: No, no.

The Court: No, not as much as to say. He was making a gesture at him with his head.

The Witness: I have a wife and child at home.

Mr. Kesselman: I submit that is not proper.

Mr. Brancato: You wanted an explanation as to why he did not give his address.

The Court: If this man has committed perjury, I think he is entitled to explain why.

[fol. 464] Mr. Brancato: Absolutely, that is his reason.

The Witness (continuing:) I did not want to be disturbed at any time.

By the Court:

Q. Then it is your testimony that you do not live at No. 198?

A. Yes, sir; I used to live there.

Q. You do not live there now?

A. No.

Q. Have you any objection to stating where you do live?

Mr. Brancato: As to that point, if your Honor please, I want to be heard.

The Court: If he has objection, let him state and the Court will determine whether he should answer.

The Witness: I have an objection.

The Court: What is that objection?

The Witness: I am afraid for my wife and child.

The Court: I am not going to make this witness testify if he gives that statement.

Mr. Brancato: If the Court please, I will advise him to give it in secret to your Honor and the Jury.

Mr. Price: Let him give it to me.

Mr. Brancato: I object to that, unless it is made secretly. That is what I want. I do not want this man's wife and child murdered.

Mr. Price: I submit at this time that that remark is highly improper.

The Court: It seems to the Court that after this explanation has been given, that the residence of this witness is immaterial.

Mr. Price: I submit that statement of counsel is highly improper. [fol. 465] The Court: He has stated his refusal to give his residence, the reason.

Mr. Price: I submit that the statement of the Assistant Prosecutor made here is highly improper and I ask your Honor at this time to withdraw a juror in this case.

The Court: Motion denied, and the jury is instructed to pay no attention to it whatever.

Mr. Price: I except.

The Court: Motion denied.

Mr. Kesselman: Exception.

Mr. Wackerman: I make the same motion on behalf of the defendants whom I represent.

Mr. Wackerman: Exception.

Mr. Price: I want to ask him some further questions.

The Court: The Court will permit further cross-examination.

By Mr. Price:

Q. Where do you live now?

Mr. Brancato: I object to it upon the ground as given, if the Court please.

The Court: If the witness desires to make any statement he may.

The Witness: I do not desire to give it.

The Court: The refusal of the witness to give his residence is sustained.

Mr. Price: I except and ask your Honor to direct the witness to give me his address.

The Court: Motion denied.

Mr. Price: I except.

[fol. 466] By Mr. Price:

Q. When you testified yesterday that you lived at No. 198 MacDougal Street, that was as true as the other testimony that you gave here, wasn't it?

A. No, the other testimony I gave here was true.

Q. Yes.

A. Yes.

Q. But you knew that you were under oath, didn't you?

A. I did.

Q. You knew that you raised your right hand in the presence of God and swore to tell the truth, didn't you?

A. I did.

Q. You know that the Judge directed you to tell us here where you lived, did he?

A. Yes, sir.

Q. You knew that after the Judge directed you, you realized that you were before your God, swearing to tell the truth and that you deliberately and wilfully and maliciously testified falsely, don't you?

A. I did not testify falsely.

Q. You did testify falsely, didn't you?

A. Against myself I did.

Q. You gave a false address, didn't you?

A. Yes, sir.

Mr. Price: That is all.

Mr. Brancato: Any more summation?

Mr. Price: That is all.

The Court: Any more questions?

Mr. Kesselman: Yes.

Cross-examination by Mr. Kesselman:

Q. When the question as to your residence came up yesterday, you did not say anything to his Honor, did you, about somebody making a motion or gesture to you, did you?

[fol. 467] Mr. Brancato: I object now, if the Court please——

A. No.

Mr. Brancato (continuing): Upon the ground that something was said to his Honor by myself and counsel.

The Court: Objection overruled.

By Mr. Kesselman:

Q. Did you say anything to his Honor yesterday? A. No, sir.

Mr. Kesselman: Of course, Mr. Brancato, you may tell him the answer while you are at it.

By Mr. Kesselman:

Q. You did not say anything to his Honor yesterday, did you? Mr. Price also asked you the particular floor that you lived on, on MacDougal Street? A. I did live there before.

Q. When did you live there? A. I think it was some time in October or November.

Q. Under what name did you live there? A. Under Dispenza.

Q. You said that you lived on the third floor, didn't you? A. Yes, sir.

Q. You said that there was six families living in the house? A. Yes, sir.

Q. Do you still say that there are six families living there? A. Yes, sir.

Q. And is that as true as everything else that you have testified to? A. Yes, sir.

Q. Everything else aside from your address, why, you told the truth? A. That is where I lived before.

[fol. 468] Q. They did not ask you where you lived before, did they, yesterday? A. No; they asked me where I lived now.

Q. Now, you understood the question perfectly, didn't you? A. Yes, sir.

Q. And you knew yesterday after Court adjourned that we had found out that you did not live at 198 Macdougall Street? A. Yes, sir.

Q. You knew that yesterday? A. Yes, sir.

Q. You knew that we told your chief that you had lied about it? A. Yes, sir.

Q. We told you that we were going to have that proof here this morning, that you had lied about that? Did not Mr. Oyler tell you that yesterday, that he knew that you had lied? A. That he knew what?

Q. That he knew that you had lied about the residence? A. He did not tell me.

Q. Who told you that we had the proof that you lied about your residence? A. Mr. Price.

Q. Who else told you? A. That is all.

Q. Did you talk it over with Mr. Manning? A. Who?

Q. Did you talk it over with Mr. Manning? A. I was talking to Mr. Oyler.

Q. Have you talked to Mr. Manning today? A. No, sir.

Q. Did not Mr. Manning shove you and tell you to take the stand two minutes ago? A. When his Honor said to give me a chance to come up.

Q. You were sitting there and you did not have anything to say, did you? A. No, sir.

Q. Mr. Manning shoved you and sent you right along, did he? A. No.

Q. Didn't he nudge you twice to come up and take the witness stand? A. No, sir.

[fol. 469] Q. Do you remember Mr. Price asked a question yesterday did you realize that you were under oath and you answered "Yes"? A. Yes.

Q. Do you remember that? A. Yes.

Q. You knew you had lied when you had testified about your residence? A. Yes, sir.

Q. I understood you to say yesterday when I was questioning you, that you had never lived in the vicinity of Union and Clinton Street? A. No, sir.

Q. Are you positive about that? A. I lived at Sixth Avenue and Union.

Q. Did you ever live at No. 646 Hicks Street? A. I did.

Q. You did live there? A. A year ago.

Q. Didn't I ask you if you ever lived there? A. Yes, sir.

Q. You lied about that too, didn't you? A. No, sir. I told you I did live there around the—

Q. Did you say yesterday that you ever lived at No. 646 Hicks Street? A. No, you did not ask me.

Q. Didn't I ask you if you ever lived in that vicinity and didn't you answer "No"? Didn't you answer me that you lived twenty blocks away, giving the address as Union Street and Sixth Avenue? A. No, sir.

Q. Do you deny that I asked you any such question? A. You asked me if I had any relations around there.

Q. Did I ask you if you ever lived—

Mr. Brancato: Give him a chance to finish his answer.

A. (Continuing:) I had them about twenty blocks from there.

[fol. 470] By Mr. Kesselman:

Q. I asked you if you ever lived in the neighborhood of Union and Columbia Street and you said "No"? A. I don't remember. It was about ten or thirteen years ago.

Q. You told me the nearest that you lived there to that location was Union Street and Sixth Avenue? A. Yes, sir.

Q. You lied when you said that you had not lived in that neighborhood?

Mr. Brancato: I object to that.

By Mr. Kesselman:

Q. You said that you never lived in that neighborhood? A. You did not ask me if I lived in that neighborhood.

Q. We will refer to the record, if that will refresh your recollection. How long did you say it was that you lived at 646 Hicks Street? A. About ten years ago.

Q. About ten years ago? A. Yes, sir.

Q. When were you married? A. About seven years ago.

Q. Don't you know that when you were married, in your marriage license and application that you gave your address as No. 646 Hicks Street? A. Yes, my mother's address.

Q. I see. I asked you yesterday if you had any relatives in that neighborhood and you said, "No." A. She don't live there no more.

Q. I asked you if any of your relatives lived there in that neighborhood and you said "No"? A. You asked me if they are living there.

Mr. Kesselman: May I ask your Honor to instruct the stenographer to read the cross-examination of this witness as to his residence? [fol. 471]

The Court: The jury may have that read to them if they wish.

By Mr. Brancato:

Q. You spoke with Oyler yesterday afternoon? A. Yes, sir.

Q. Oyler's statement was that he had spoken with Mr. Kesselman who told him that you did not live at 196 or 198 Macdougall Street—Mr. Oyler told you that yesterday? A. Yes.

Re-recross-examination by Mr. Price:

Q. You testified here that I said to you in the presence of Mr. Oyler that my detective reported back to me that you did not live at 198 Macdougall Street, isn't that so? A. Yes, sir.

Q. Didn't I state that to you in your presence and in the presence of Mr. Oyler? A. Yes, sir.

Q. After I made that statement, did not Mr. Oyler state that he knew that was so; that you did not live there? A. He did not say that he knew that was so.

Q. But you did not volunteer—you did not voluntarily ask the Court to come up, ask the Judge's permission to go back on the witness stand and voluntarily correct your testimony, did you? A. I did.

Q. Yes or no? A. Yes.

Q. When did you ask him? A. Ask who?

Q. The judge, to come up and change your testimony? A. No. I never asked him?

Q. You never asked him? A. No.

Q. You never asked Mr. Brancato to put you back on the witness stand and tell these men about the truth, did you? A. I did.

[fol. 472] Q. When did you ask him to do that? A. This morning.

Q. He did not do it, did he?

Mr. Brancato: I did not do it because you are on the defense. Don't stage big stage plays.

Mr. Price: I know all about such plays. A. (No answer.)

GUISEPPE PIAZZA, called as a witness on behalf of the defendants and having been duly sworn, testified as follows:

(A. O. Tucci, acting as Interpreter.)

Direct examination by Mr. Price:

Q. What is your occupation? A. Barber.

Q. Where is your place of business? A. On the corner of De-
graw and Columbia Street.

Q. How long have you been in that business. A. At this particular place?

Q. Yes. A. At this place here, over six months.

Q. In business for yourself? A. Yes, sir.

Q. Do you know Antonio Centorino? A. Yes, sir.

Q. The defendant sitting at the table in the corner? A. Yes, sir.

Q. Do you know his wife? A. Yes, sir.

Q. Where is she? Point her out? A. (Witness points out Mary Centorino as directed.)

Mr. Price: (Witness points to the back of the court room to the woman in the back of the court room.)

A. The last one.

[fol. 473] By Mr. Price:

Q. How far from 172 Columbia Street, is your place of business?
A. About fifteen paces.

Q. Were you in the neighborhood of 172 Columbia Street on January 16th, in the morning? A. Yes, sir; I was there with a friend of mine.

Q. Who were you with? A. A man by the name Antomino Mangiamiele.

Q. Did you see anybody that you knew in front of 172 Columbia Street at that time? A. Yes, sir.

Q. Whom did you see? A. I saw Mrs. Centorino and her husband, both of them walking together. The wife was about a couple of feet away from him.

Q. What time of the day was this? A. Just before noon, about half past eleven.

Q. Do you see anybody else in the court room that you recognize being down near 172 Columbia Street that morning? A. A young man was talking to Centorino.

Q. Did you see the young man do anything while he was talking to Centorino? A. As I was approaching the grocery store where I was about to go, I noticed that this young man who was talking to Centorino, handed him a package.

Q. How big was the package? A. (Witness indicates with his hands.)

Q. Would you say about fourteen by eight?

Mr. Brancato: No, it is not fourteen by eight.

Mr. Price: All right, we will have him hold out his hands and get the jury's verdict on it.

By Mr. Price:

[fol. 474] Q. How long was the package, fourteen—

Mr. Brancato: Keep on stretching out and make it a little bigger. He has given two or three dimensions now.

Mr. Price: Hold your hands still and show me how long the package was.

(Witness does as requested.)

Mr. Price: How long would you say, Mr. Interpreter.
The Interpreter: I would say about fourteen inches.

By Mr. Price:

Q. How wide was it? A. (Witness indicates.)

The Interpreter: About eight inches.

A. Wrapped up in a newspaper.

By Mr. Price:

Q. Did you hear any talk between this young man and Centorino?

A. No, sir.

Q. Can you pick the young man out here in the court room that you saw give Centorino the package?

Mr. Brancato: Yes or no.

A. Probably I might be able to do it if I saw him, but I am not sure whether I can or not.

By Mr. Price:

Q. Come down here and see if you can? A. I do not see him.

Q. That is, you do not recognize him? A. No, sir.

Mr. Price: Your witness.

Cross-examination by Mr. Brancato:

Q. Look at this man. Stand up, Nunzio.

[fol. 475] (Nunzio Dispenza does as requested by Mr. Brancato.)

Q. Is that the man? Look at him now; is that the man, please, yes or no?

A. I believe it is him. He had a coat buttoned up.

By Mr. Brancato:

Q. You knew him before when you walked around, didn't you?

A. No.

Q. You came back and said, "I do not see him" for a bluff, didn't you?

Mr. Price: For what?

By Mr. Brancato:

Q. Just for effect?

A. I did not.

Q. Just for effect?

A. Really, I cannot state that because when I last saw him he had a different coat on him, buttoned.

Q. What kind of a coat did he have on?

A. One of those soft hats and a dark coat.

Q. Who else is coming in here to testify that they saw some man give Centorino a package on that day?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial, and improper.

By Mr. Brancato:

Q. If you know?

The Court: Objection sustained.

By Mr. Brancato:

Q. Have you spoken with anybody about coming into Court and testifying that somebody gave Centorino a package on January 16th?

A. No, sir, on the 16th day of January—

[fol. 476] Q. What is the answer please.

A. (By the Interpreter.) He said "No" first.

Mr. Price: I submit that the witness be permitted to answer. He said, "No, sir."

The Court: Ask the witness if he had finished his answer.

A. No, I was not.

The Court: Please finish your answer. Counsel will please refrain from interrupting.

Mr. Brancato: If the Court please, my question called for yes or no, has he spoken with anybody.

The Court: Have you answered that question, yes or no?

The Witness: No.

By the Court:

Q. You cannot answer it?

A. Not today.

Mr. Brancato: Not today, he can't.

By Mr. Brancato:

Q. Do you understand that question?

A. Yes, sir.

Q. Now, what is the question to which you are going to give an answer?

A. When I saw Centorino talking to his wife, I saw this young man talking—

Q. That is the question that I put to you, is it? I asked you a question, didn't I, before?

Mr. Price: You asked him a number of them. I submit that this form of examination is improper and I object to it.

The Court: Whatever he may have done before, just ask him the question now, for anything that he has to say.

[fol. 477] By Mr. Brancato:

Q. Have you spoken with anybody about your coming down here today to testify in favor of Centorino to the effect that he received a package on January 16th, yes or no?

A. Yes, I did.

Q. With whom have you spoken?

A. With Centorino.

Q. And when did you speak to Centorino?

A. After he was bailed out.

Q. Where was this talk had?

A. In the barber shop, as he comes there.

Q. He is a customer of yours, is he?

A. He comes there once in a while.

Q. On what day was it that you had this talk with Centorino, what date?

A. On the 16th day of January, before noon.

Q. No question about that in your mind, is there, about that date, January 16th?

A. Yes, before noon on the 16th day of January.

Q. You do not mean that, do you?

Mr. Price: I submit that he has testified to that.

Mr. Brancato: Do you want it on the record?

Mr. Price: Yes.

Mr. Brancato: Will you please have my last couple of questions and the answers read?

Mr. Price: I want it the way it is.

(The record was repeated by the reporter.)

By Mr. Brancato:

Q. He was bailed out on what day, do you know that?

A. During that week when he was bailed out, he came and saw [fol. 478] me about it. He said, "Will you testify that this young man gave me this package?"

Q. So that talk was not had on January 16th, was it?

A. No.

Q. So when you said January 16th before, while counsel was talking and he did not hear you, why, at that time you made a mistake, did you?

A. I mean to say that it was on the 16th when Centorino and this young man and his wife were talking together. The conversation which we had about this testimony was after he came out on bail and was during that week.

Q. What kind of a barber shop is this that you were working in on the 16th of January?

Mr. Price: That he was working in, that he owned.

Mr. Brancato: I assume that he worked there too.

A. It is a barber shop. Rubino owns the building.

By Mr. Brancato:

Q. Do you own the barber shop?

A. I and my brother.

Q. How many barbers are working there?

A. I and my brother.

Q. Just the both of you?

A. Yes, sir.

Q. Where was your brother at the time that you claim that you saw somebody give somebody else a package?

A. He was in the barber shop.

Q. Any customers inside?

A. As I have a wife, I went out to buy some groceries.

Q. Where does your wife live?

A. At No. 51 Degraw Street.

Q. How far is that from the barber shop?

A. About over fifty paces.

[fol. 479] Q. Have you any children?

A. Yes, sir.

Q. Where were you going at the time that you came out of the barber shop?

A. I was going to the Greek grocery store to buy some groceries for the family.

Q. A Greek grocery store?

A. Yes, sir.

Q. Where is that grocery store, between what streets?

A. On Columbia Street. I was going towards Columbia Street.

Q. Is your barber shop on Columbia Street?

A. No, Degraw Street.

Q. It is in Degraw?

A. No—I was walking towards that way, going to the grocery store.

Q. Your barber shop is on Degraw Street, is it? How far away from Columbia Street?

A. About seven or eight paces.

Q. Seven or eight paces from Columbia Street?

A. Yes, sir.

Q. And how far is this grocery store where you were going?

A. About from the corner of Degraw Street to the grocery store is about twenty paces away.

Q. And now, did you get into the grocery store?

A. Yes, sir.

Q. When did you see Centorino?

A. When I was about seven or eight feet away from the grocery store.

Q. Whom did you see first?

A. Centorino on one side, up against the wall. He was talking to this young man and his wife was on the opposite side.

Q. You saw that, did you? How long did it take you to go from the place you were at the time that you saw Centorino until you got to the grocery store?

A. Two or three seconds.

Q. Did you stop to look at Centorino?

A. No, I did not stop—

[fol. 480] Q. Then you kept on walking, did you?

A. I saw—

Mr. Kesselman: Let him answer now.

Mr. Brancato: The answer is "No."

Mr. Kesselman: No, it is not completed yet.

(The record was repeated by the reporter from the question starting "Whom did you see first?" down to and including Mr. Kesselman's remark "No, it is not completed yet.")

Mr. Kesselman: Mr. Brancato knows what he is going to testify to as well as I do.

Mr. Brancato: That is a very frank and free statement of counsel. I don't know what the man is going to say any more than he does, who has talked to this man before the trial.

Mr. Kesselman: Who says I have talked to him? I want permission for this witness to be permitted to finish his answer.

The Court: He may have that.

(The record was again repeated by the reporter.)

A. As I was going towards the grocery store, at that particular moment, I noticed that this young man gave to Centorino a package and greeted one another, shook hands and this young man had a pipe in his hands and I went into the grocery store.

By Mr. Brancato:

Q. Did you stop to look at Centorino on this occasion?

A. I just bowed to them.

[fol. 481] Q. On what side of the street was Centorino on?

A. On the left side going toward Atlantic Avenue.

Q. Is that the same side of the street that you were on?

A. Yes, sir.

Q. Was Centorino up against the wall?

A. Yes, sir, and this young man was whispering in his ear so as his wife could not hear.

Q. He was up against the wall, eh?

A. Yes, sir.

Q. You say he was whispering to his ear?

A. Right at the entrance, almost at the entrance of where he lived.

Q. This young man was whispering in Centerino's ear so that his wife could not hear. Is that what you said?

A. Yes, sir.

Mr. Brancato: That is all.

Redirect examination by Mr. Price:

Q. What did you say was the name of the man who was with you at this time?

A. Antomino Mangiamele.

Mr. Price: That is all.

Mr. Brancato: Wait a moment.

Recross-examination by Mr. Brancato:

Q. Where was Mangiamiele?

A. He was with me.

Q. He left the barber shop to go to the grocery store with you?

A. Yes, sir.

Q. He left the barbershop to go to the grocery store with you?

A. Both of us went out from the barber shop for the purpose of going to the grocery store to buy our family supplies.

Q. Oh, I see; you were buying your family supplies, and Man-[fol. 482] giamele, your friend, was also buying family supplies, is that right?

A. Yes, sir.

Mr. Brancato: That is all.

ANTOMINO MANGIAMELE, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

(A. O. Tucci acting as Interpreter.)

Direct examination by Mr. Price:

Q. What is your business?

A. Longshoreman.

Q. By whom are you employed?

A. The Atlantic Stevedores.

Q. Where is their business?

A. At the Erie Basin.

Q. How long have you been employed by the Atlantic Stevedore Company?

A. Ten years.

Q. Are you married?

A. Yes, sir.

Q. Where do you live?

A. 513 Henry Street.

Q. Near where is that?

A. At the corner of Sacket and Henry.

Q. Do you know a man by the name of Guiseppe Piazza?

A. Yes, sir.

Q. Do you know what his business is?

A. He is a barber.

Q. Where is his place of business?

A. That is near the corner of Court and Columbia—

Q. Of what?

A. Degraw and Columbia.

Q. Did you see Guiseppe Piazza on the morning of the 16th of January?

A. Yes, sir.

Q. Where did you see him?

A. I saw him because we were going together to buy some groceries.

Q. Did you go to his barber shop that morning?

A. Yes, sir.

[fol. 483] Q. Did you leave the barber shop with Piazza?

A. Yes, we left the barber shop together.

Q. Will you tell the jury what time you left the barber shop and where you went with Piazza that morning?

A. We left the barber shop about 11:20 or 11:25.

Q. Where did you go?

A. We started to walk towards the grocery store.

Q. What grocery store?

A. It is on the left-hand side.

Q. Of what street?

A. Columbia Street, near Sedgwick Street, near Sedgwick and Degraw.

Q. Do you know the number of the grocery store that you started to go to?

A. No, sir; I don't. All I know is that it is a Greek, that is all.

Q. Do you know Antonio Centorino, this defendant, with his hand up to his face?

A. Yes, sir.

Q. How long have you known him?

A. I know him for about four or five years.

Q. Are you related to him?

A. No, sir.

Q. Now, as you walked toward this Greek grocery store with Piazza, as you have testified, did you see anybody whom you know?

A. Yes, sir.

Q. Whom did you see?

A. I saw a young man that was talking with him.

Q. Do you see the young man in the court room who was talking to Centorino at that time?

A. Yes, sir; if I see him I will know him.

Q. Look around and see if you can see him.

A. (Witness points.)

Q. Come down and put your hand on him.

Mr. Brancato: Stand up, Nunzio.

[fol. 484] Mr. Kesselman: Wait a minute, now. That is what you objected to before.

Mr. Brancato: He can come down.

The Court: Let him go down.

Mr. Kesselman: Let it appear on the record that he has picked him out.

Mr. Brancato: Oh, yes, he has picked him out; no question at all about it.

Mr. Price: Have the record show, Judge, that the witness left

the witness stand and walked down to where Nunzio Dispenza was seated and placed his hand upon his shoulder.

The Court: Let that appear on the record.

By Mr. Price:

Q. Tell us what you saw this man whom you have just picked out do or say to Centorino, if anything?

A. All I can say that I was walking right about seven or eight paces away from there, also saw Mr. Centorino near the two of them, I saw them and noted that they were speaking very confidentially and I saw that he was about to give him a package—

Q. (Interrupting.) Who was about to give who a package?

A. The young man on whose shoulder I placed my hand.

Q. Was about to give who a package?

A. Was about to give Centorino, give to Centorino.

Q. Did you see him give it to Centorino?

A. Yes, I saw him give it to him. I said, "Hello, Centorino!" And I went inside.

Q. Did you hear any of the conversation between this young man and Centorino?

A. No, sir; all I know that they were talking very confidentially together.

Q. After that you came to my office with Centorino, did you? [fol. 485]. Mr. Brancato: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Price: I except.

By Mr. Price:

Q. Did you tell me what you knew about this case?

Mr. Brancato: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Price: I except.

By Mr. Price:

Q. Did you come to make a statement to me at my office as to what you knew about this case?

Mr. Brancato: The same objection, if the Court please, incompetent, irrelevant and immaterial.

The Court: I will be glad to hear you on this proposition.

Mr. Price: Common sense.

The Court: What difference does it make what this man did after an occurrence until his version of it is questioned?

Mr. Price: Common sense teaches us before any one puts a witness on the witness stand he interviews the witness in order to ascertain what the witness is going to testify to.

The Court: If common sense teaches that, why bother about it.

Mr. Price: Because I want the jury to know that.

Mr. Brancato: Common sense——

[fol. 486] Mr. Price: Your Honor can rule on it and I will stand on my exception.

Mr. Brancato: If the jury cannot understand common sense according to your own——

Mr. Price: I did not say that.

Mr. Brancato: That is the conclusion that you wish to draw.

Mr. Price: That is what you say, not me.

Cross-examination by Mr. Brancato:

Q. What is your first name?

A. Tony.

Q. How old are you?

A. Twenty-four.

Q. How long have you been in this country?

A. Ten years.

Q. Ever convicted of any crime?

A. No, sir.

Q. Ever been arrested?

Mr. Kesselman: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Kesselman: May I ask your Honor to instruct Mr. Brancato at this time that he as a prosecuting attorney knows that he has not any right to ask any such question because it is incompetent. The Courts have repeatedly ruled that such a question is absolutely improper.

The Court: The Court now rules for the benefit of both sides, that it is improper to ask a question, "Has he been arrested?"

By Mr. Brancato:

Q. Now, you are from the same town that these defendants come from?

A. Yes, sir; no, not all of them, some are not.

Q. Which are from the same town?

A. Centorino does not come from the same town.

Q. Who did?

A. Pace and the Agnellos.

[fol. 487] Q. You are all Sicilians, are you?

A. Yes, sir.

Q. You have known these people for quite some time, haven't you?

A. Yes, since I was a boy.

Q. You have been friends around that neighborhood, Union Street and Degraw, for quite some years; quite a number of years?

A. No, not very intimate friends, but I have met them. I have bid the time, that is all, and went along.

Q. Did you get a subpoena to appear here in court today, yes or no?

A. Yes, sir; the lawyer gave it to me, no.

Q. You did not get any subpoena to come here; you came here voluntarily, didn't you?

A. Yes, because I volunteered to be a witness; I told them I was going.

Q. You went to the lawyer's office on a certain work day, didn't you, voluntarily?

A. Yes, sir.

Q. Now, when did you first speak with your friend Centorino about this case?

A. It was two or three or four days after they had been bailed out.

Q. Did he come to you or did you go to him?

A. He was passing by the house—I was just about to come out of the house. I said, "What became of him?"

Q. What is your business?

A. I am a longshoreman, and an assistant foreman.

Q. When do you work?

A. May be a ship will come in next week.

Q. Was there a ship in during the week of January 16th?

A. Yes, sir.

Q. Were you working on that day?

A. Yes, sir.

Q. What time did you go to work?

A. I went to work on Tuesday.

Q. What time did you go to work on the 16th?

A. No, on the 16th I did not go to work.

[fol. 488] Q. Did you go to work the next day, the 17th?

A. On the 17th and on the 18th worked in Staten Island.

Q. You worked in Staten Island?

A. Yes, sir.

Q. Where?

A. At Pier 5.

Q. What firm?

A. The Atlantic Stevedore Company.

Q. Who was your boss there?

A. My uncle.

Q. Oh, I see.

Mr. Price: That is improper, and I object to the remark and move to strike it from the record.

The Court: Motion granted.

By Mr. Brancato:

Q. Your uncle is the boss in Staten Island and you went to work for him on the 17th, is that right?

Mr. Price: That is not right; he said the 18th.

Mr. Brancato: The 17th he went to work, that is what he said, the 17th and 18th.

Mr. Price: He said 'At Staten Island I went on the 18th.'

Mr. Brancato: May I have the record read.

The Court: Yes.

(The last eleven questions and answers except one were repeated by the reporter.)

(The last question was repeated by the reporter.)

A. No, on the 17th the steamer arrived.

By Mr. Brancato:

Q. Didn't you say that you went to work on the 17th?
[fol. 489] A. No, on the 17th the steamer arrived; then the men generally go to work on the next day.

Q. What was the name of the ship?

A. I don't remember well the name of the steamer.

Q. How many days did you work on that ship?

A. I don't remember exactly, but five or six days.

Q. You don't know the name of the ship although you worked on it for five or six days?

A. I don't remember.

Q. Where did you work on the 15th day of January?

A. I did not work.

Q. On the 14th where did you work?

A. No work.

Q. Where did you work before the 17th day of January?

A. About ten or fifteen days before.

Q. For whom were you working then?

A. With the same company.

Q. What company is that?

A. The Atlantic.

Q. Of which your uncle is the foreman or your boss; is that right?

A. Yes, sir; he has charge of them.

Q. Is there any records kept of the days that you worked?

Mr. Price: If he knows.

A. They give us a check; of course we go by the check and we get paid.

By Mr. Brancato:

Q. On the morning of the 16th of January you say you were in this barber shop—Piazza's barber shop, is that right?

A. Yes, sir.

Q. By the way, Piazza is also a "piazon" of yours?

[fol. 490] Mr. Price: Put that on the record, "townsman" "piazon" means, doesn't it?

Mr. Brancato: No, it does not mean that.

A. Yes.

The Court: I think we should have that word interpreted to the jury. It means nothing to them otherwise.

By Mr. Brancato:

Q. Does he come from the same town?

A. Yes, sir.

Q. What time of the day did you get to Piazza's barber shop?

A. It was about 11:20 or 11:25.

Q. What did you do there when you got to Piazza's barber shop at 11:25?

A. I went over there and he says, "Come on, come over to the grocery store, we are going to buy some groceries."

Q. What did you do when you got to Piazza's barber shop, what were you doing in the barber shop?

A. A shave.

Q. You got there twenty-five minutes after eleven or half-past eleven, you said, and then you took a shave, is that right?

A. No, I shaved about 11 o'clock.

Q. Didn't I ask you before what time you got to the barber shop and you said about twenty minutes or twenty-five minutes after eleven?

Mr. Price: No, you asked him what time he left.

A. No, you asked me when I and Piazza left the place.

By Mr. Brancato:

Q. Who shaved you?

A. He himself.

[fol. 491] Q. That is, the witness who was here before?

A. I don't know if he is here.

Q. Didn't you see Piazza outside today?

A. Yes, sir.

Q. You were talking to him outside, weren't you?

A. Sure. Yes, he was outside.

Q. You both spoke about this case?

A. No, we spoke about something else.

Q. You did not speak about this case?

A. No, sir.

Q. You did not speak about as to why you were brought here; as to why you came here?

A. Yes, about what happened, about this case.

Q. Did you speak about the young man who was supposed to have given Centorino a package?

A. No.

Q. You did not speak about that at all?

A. We did not come over here to discuss this matter at all.

Q. Did you see Nunzio outside of the court room at any time today?

A. No, sir.

Q. How do you know his name is Nunzio; as you were walking casually to the grocery who told you first?

A. I don't know whether his name is Nunzio.

Q. You don't know?

A. No.

Q. When was the first time that you saw him?

A. The first time I saw him was on the 16th day of January.

Q. On the 16th day of January you saw him — store, is that right?

A. Yes.

Q. At that time you were on the opposite side of the street?

A. The same side.

Q. Where is this grocery store that you were supposed to have been going to to buy groceries, that morning, where is it?

A. It is on the left-hand side.

[fol. 492] Q. What number?

A. I think it is 170 or 172.

Q. And is that on the same side of the street that Centorino lives on?

A. Yes, because his wife was there too.

Q. How far is this grocery store from Centorino's house?

A. About two or four paces away from there.

Q. So that that was the first time that you saw him?

A. Yes, sir.

Q. You said "Hello" to him?

A. Yes, sir.

Q. And you passed by?

A. Yes, sir.

Q. It took you how many seconds to walk those seven or eight paces after you said "Hello" to him?

A. As I said "Hello" I saw that package was handed to him. I kept on walking.

Q. You have not seen him since?

A. No, sir.

Q. This is the first time that you saw him since January 16th is that right?

A. This is the second time that I saw him.

Q. You have no doubt but that he is the man that you saw that day?

A. Oh, yes, I could print him.

Q. You could print him? Did you say you could print him?

A. I mean to say that as though I had seen him four or five years.

Q. You what?

A. As though I had known him four or five years.

Q. You see him now and you know him as though you had known him four or five years, that is true, isn't it?

A. As though we had been together all the time.

Q. Of course the fact that somebody pointed him out to you has nothing to do now with giving you that strong memory?

Mr. Price: I object to that. That is not predicated on the evidence in this case at all.

[fol. 493] The Court: Can't you frame your question without including the words "strong memory"?

Mr. Brancato: I will withdraw it.

By Mr. Brancato:

Q. Do you know Alba?

A. Who is Alba?

Q. I am asking you, do you know a man by the name of Alba, Stephen Alba?

A. Stephen Alba is that stout man.

Q. The defendant down there?

A. Yes.

Q. You know him, don't you?

A. I only know him by sight.

Q. Which of those five defendants do you know the best?

Mr. Price: I submit that is improper as to form. He has not testified that he knew anybody other than Centorino and Alba now.

The Court: Objection overruled.

Mr. Price: I except.

A. Centorino.

By Mr. Brancato:

Q. Have you spoken with any of the defendants about this case besides Centorino?

A. Yes, I spoke to him about this case because I only know Centorino.

Q. You work on ships, don't you?

A. Yes, sir.

Q. Did you ever get cocaine from the ships and give it to Centorino to sell?

A. I? Never.

Q. Do you know what cocaine is?

A. What is it? What is cocaine?

Q. Do you know what cocaine is? (To the interpreter.) Do not tell him what it is. He will tell us.)

[fol. 494] Mr. Price: I submit that is improper.

A. Whoever saw cocaine?

Mr. Brancato: That is all.

Mr. Price: That is all.

The Court: How many witnesses is it expected will testify for your client?

Mr. Price: My client? I have a number of them.

The Court: Three or four more?

Mr. Price: Oh, more than that.

The Court: Eight or ten more?

Mr. Price: I should think so, at least, besides the character testimony that I propose to offer.

Mr. Brancato: Character?

Mr. Price: Yes, character, that is what I said.

Mr. Brancato: I just asked you.

Mr. Price: I did not like the way that you said it, that is all.

GUISEPPE BLANDI, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

(A. O. Tucci, acting as Interpreter.)

Direct examination by Mr. Price:

Q. What is your business?

A. I am a knee pants contractor.

Q. Where is your place of business?

A. 460 Hicks Street.

Q. Are you in the business all alone or have you a partner?

A. Alone.

Q. How many people do you employ at this 460 Hicks Street?

A. Twenty-five.

[fol. 495] Q. Twenty-five?

A. Yes, sir.

Q. Now, do you know the defendant Centorino, sitting at the table?

A. Yes, I know him.

Q. Do you see him sitting over there?

A. Yes, sir.

Q. Do you know Mrs. Centorino, sitting in the back of the court room?

A. Yes, sir; I do.

Q. Was she in your employ about January, 1922?

A. Yes, sir.

Q. Do you know where she lived on that day?

A. She was home that day; she did not come to work.

Q. I did not ask that.

Mr. Brancato: I move to strike out the answer.

The Court: Yes.

Mr. Price: I consent.

By Mr. Price:

Q. On the 16th day of January, 1922, do you know where Mrs. Centorino lived, yes or no?

A. Yes, sir, I do.

Q. Where did she live?

A. 172 Columbia Street.

Q. What floor did she live on there, if you know?

A. I believe it was the second floor.

Q. How long prior to the 16th of January, 1922, did Mrs. Centorino work for you? A. Worked about eight or ten months, or a year.

Q. What did she do, working for you?

Mr. Brancato: I object to that as incompetent, irrelevant and immaterial. Come down to the issue now.

The Court: Objection overruled.

A. She worked on pants.

[fol. 496] By Mr. Price:

Q. What kind of pants?

A. Children's pants.

Q. Did she come to work on the morning of the 16th of January, 1922?

Mr. Brancato: I object to that question as leading, if the Court please.

The Court: Objection overruled.

A. No, sir.

By Mr. Price:

Q. When she did not come to work on that morning, what, if anything, did you do?

A. I went to her home to look for her.

Q. What time did you go to her home to look for her?

A. It was about half past eleven or twenty minutes to twelve.

Q. Did you see her on that morning?

A. Yes, sir.

Q. Who else did you see?

A. I saw her husband with another that was talking together on the sidewalk there.

Q. Did you see her there, too, at that time?

A. Yes, sir; I did see her.

Q. Tell us everything that happened while you were there?

A. I was about to approach her, to ask her why she had not come to work that morning, but as I saw that her husband was engaged in conversation with some one there, I did not think it was the proper time to approach her, so I remained about five or ten paces away from her.

Q. What happened while you were that five or ten paces away?

A. I saw that while I was standing there, I saw that while he was talking to this other man that was with him, give Mr. Centorino a package and stood there for about five or six minutes talking together, [fol. 497] and he said, "Good night, I will see you this evening."

Q. Did you hear any other conversation between this other man and Centorino at that time or at any other time?

A. That is all that I heard.

By the Court:

Q. Did this man say to Centorino at twelve o'clock in the middle of the day, "Good night, I will see you this evening?"

A. No, "Good-bye, I will see you this evening."

By Mr. Price:

Q. After that did the man go away?

A. Yes, sir, he did.

Q. And did you talk to Mrs. Centorino?

A. Yes, sir—

Mr. Brancato: Yes or no.

A. Yes.

By Mr. Price:

Q. After you spoke to Mrs. Centorino did she come to work that day?

A. Yes, sir; one o'clock she came to work.

Q. One o'clock?

A. Yes, sir.

Q. Do you see the man in Court that you saw hand a package to Centorino that day?

A. Yes.

Q. Come down and point him out.

The Court: Go down off the stand and point him out by putting your hand on him.

(The witness does as requested.)

Mr. Price: I would like to have the record show that the witness walked down and placed his hand on the shoulder of Nunzio Dispenza.

[fol. 498] The Court: Let it appear on the record as stated by Counsel.

By Mr. Price:

Q. Do you know the man's name upon whose shoulder you placed your hand?

A. No, sir.

Mr. Price: Your witness.

Cross-examination by Mr. Brancato:

Q. Mr. Blandi, you just said in Italian to the Interpreter and the Interpreter said that you heard the man who gave Centorino a package say "Good night, I will see you tonight"—wait a moment, please, I am not through with my question. Did you hear that man say "Good night?"

A. I made a mistake.

(By the interpreter:) He said it in English.

By Mr. Brancato:

Q. Didn't you say it in Italian to the Interpreter, "He said, 'Good night' "?

A. I don't remember if I said that a little while ago.

Q. Do you wish to say now that you did not say "Good night" in Italian?

A. That is what I said to my counsel.

Q. You did say that but you made a mistake, did you?

A. Yes, sir.

Q. Of course, the conversation that Centorino had with this man who gave him the package, you could hear, couldn't you?

A. They were talking very low because I heard that, he said it a little louder than the other part.

Q. You did not hear any part of the conversation except the last part, "Good night, I will see you tonight."

A. Yes, that is all.

[fol. 499] Q. Do you know that that is just the same thing that Mrs. Centorino heard, "I will see you tonight?" Do you know that?

A. I don't know that.

Q. You have spoken to Mrs. Centorino about this case, haven't you? Yes or no?

A. No, I did not speak to her only about the case tomorrow, that is all.

Q. That is all that you have spoke- about the case to Mrs. Centorino?

A. We did not speak about the case.

Q. You are also a Sicilian, are you?

A. Yes, sir.

Q. Are you a townsfolk, the same town as Centorino?

A. What do I know where he comes from.

Q. The same Province?

A. If I don't know where he comes from what can I say?

Q. What Province do you come from in Sicily?

A. Palermo.

Q. A good city.

Mr. Price: I submit that Mr. Brancato should not say those things and I will ask your Honor to instruct Mr. Brancato not to say them.

Mr. Brancato: It is my home town, do not forget it.

Mr. Price: That is different. I withdraw my objection, because I know your home town is a wonderful town.

Mr. Brancato: I know my townspeople, too, better than you do.

By Mr. Brancato:

Q. How many people are you employing now?

A. About twenty or twenty-five, I don't know.

[fol. 500] Q. You have got them now, twenty-five?

A. Yes, sir.

Q. During the month of March or February, did you have twenty-five working for you?

A. Yes, sir.

Q. Also during the month of January, 1922, twenty-five?

A. Yes, sir; when I work, that is what I have all the time.

Q. Were you working steadily during the month of January with twenty to twenty-five employees?

A. When I work, I always work with twenty to twenty-five people.

Q. I am asking you now, during the month of January did you

have steadily from twenty to twenty-five employees in your place of business?

A. Yes, sir.

Q. During that month of January when you had twenty to twenty-five employees, did any one of them take sick besides Mrs. Centorino?

A. I cannot recall that.

Q. You don't remember that, but you do remember that you went after Mrs. Centorino on the 16th, don't you?

A. Yes.

Q. Do you make it a habit of going to the home of every employee you have if they do not come to work in the morning?

A. Yes, because I have the same number that has to work with me all the time.

Q. So that if a person does not come to work in the morning at eight o'clock, the regular hour, you leave the shop and go to their house to find out why they are not working; is that your system?

A. Yes, otherwise I will have to employ somebody else.

Q. You are so busy in your place of business that you can afford to leave your own services and go to the house of your employees, is that right?

[fol. 501] A. I did not sacrifice much time on that; it did not take me only two minutes to go over there.

Q. Where is your place of business?

A. 460 Hicks Street.

Q. 460 Hicks Street?

A. Yes, sir.

Q. Near what street is 172 Columbia Street?

A. Near Degraw.

Q. How many blocks between Degraw and Hicks Street?

A. One block.

Mr. Price: They intersect.

A. One block.

By Mr. Brancato:

Q. How many blocks from your place of business to 172 Columbia Street?

A. One block I said it is.

Q. You said it is one block from your place of business at 460 Hicks Street to 172 Columbia Street, is that right?

A. It is only one block to go to Columbia Street.

Q. One block from Hicks Street to Columbia?

A. Yes, sir.

Q. When you get to Columbia Street, how many blocks did you have to walk?

A. About fifteen paces away from Columbia—from Degraw Street.

Q. From Degraw Street it took you two minutes, is that right?

A. Well, I don't know. I said may be two or five might be, because I said two minutes, are you going to pick at it?

Q. Now, Mr. Blandi, how far away were you when you claim that you saw Mrs. Centorino that morning?

A. About five or six paces.

Q. At that time what was she doing?

A. She was standing there on the sidewalk; I presume she was waiting for her husband.

[fol. 502] Q. Where was her husband?

A. He was talking to him.

Q. Where?

A. On the sidewalk.

Q. How far from the curb?

A. I did not measure it.

Q. Was he between the curb and the house?

A. He was in the center of the sidewalk.

Q. And they did not move, did they, from the time that you saw them talking?

A. I did not see them move.

Q. Did you hear or did you see the man who had the package whisper something to Centorino's ears?

A. No, they were talking very low; I did not see that.

Q. You did not see any whispering to the ear, did you?

A. No, sir.

Q. You did not hear anything except "Good night" or "Good bye, I will see you tonight?"

A. That is all that I heard.

Q. You know Piazza, the barber, don't you?

A. I don't know him.

Q. Don't you remember Joe Piazza, the fellow who has a barber shop on Columbia and Degraw?

A. It might be possible that I know him. I don't know who he is.

Q. Do you know Tony Mangiamele?

A. Who knows him? I never saw him.

Q. You don't know him either, do you?

A. I never saw him.

Q. Did you receive a subpoena to come here in court?

A. No, sir.

Q. You have been in court or outside the court room all day today, have you?

A. Yes, sir.

Q. You are very busy down in your shop now, aren't you?

A. Yes.

Q. You have plenty of work down there, haven't you?

A. Well, no, not so much now.

[fol. 503] Q. How many girls do you employ now?

A. Well, we are working and we have the same number all the time.

Q. How many have you there now?

A. The same number as I told you before.

Q. You keep them all busy, don't you?

A. Yes, sir; they are working.

Q. You have been in Court all day without a subpoena?

A. I came here about half past eleven.

Q. Now, when was the first time that you spoke with Centorino about what you claim that you saw?

A. The only person that I spoke about that to was his wife, and the reason that I spoke to her—

Q. (Interrupting.) Never mind any reasons. When was the first time that you spoke to Centorino, that is the question?

Mr. Price: I object to that question, except that he ask him what he spoke to him about. The witness said he never spoke to Centorino but to his wife, about the case.

Mr. Brancato: I did not know that he gave that answer.

By the Court:

Q. Did you ever speak to Centorino about this case?

A. No, only with his wife.

By Mr. Brancato:

Q. Where did you speak with anybody else about the case besides his wife?

A. Only to the lawyer, that brought me over there.

Q. You went to the lawyer, did you, to the lawyer's office?

A. Yes, sir.

Q. How many times did you go to the lawyer's office?

A. Once.

[fol. 504] Q. You spent how much time that day away from your shop?

A. I don't know, about half an hour, one hour.

Q. Now, let me get this right. You spent half an hour from the time that you left your shop until you went to the lawyer's office and told your story to the lawyer and back to the shop, is that your answer? Half an hour?

A. I told you about half an hour or an hour.

Mr. Brancato: That is all.

Redirect examination by Mr. Price:

Q. You told me what you knew about the case. I asked you then—

Mr. Brancato: I object to the question.

Mr. Price (continuing: —if you would come to Court if I notified you when I wanted you; isn't that so?

Mr. Brancato: I object to the question as incompetent, irrelevant and immaterial. The fact is he is here without a subpoena.

The Court: Objection overruled.

By Mr. Price:

Q. I asked you then if you would come to Court if I would notify you when I would want you and you said you would?

A. Yes.

Q. You came here after I had notified you to come?

A. Yes, sir; that is why I came here.

Mr. Brancato: I object to that. Don't tell him that through anybody else. You said, "At your request, at your notice."

By Mr. Price:

Q. Did I send Mrs. Centorino to ask you to come here?

[fol. 505] Mr. Brancato: I object to that question as leading.

The Court: Of course, those questions are leading.

Mr. Price: It is only on redirect to straighten out what he asked about.

Mr. Brancato: Don't you testify for him.

The Court: On re-direct the rules are the same as on direct with respect to a leading question. Do you press the question?

Mr. Price: Yes.

The Court: Objection sustained on the ground that the question is leading.

Mr. Price: I except.

By Mr. Price:

Q. Did Mrs. Centorino come and ask you to come to Court?

Mr. Brancato: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Brancato: And leading.

A. Yes, sir.

Mr. Price: That is all.

Mr. Brancato: That is all.

FRANK LIMA, called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. Where do you live?

A. 145 Union Street.

Q. How long have you been in America?

A. Ten years.

[fol. 503] Q. Did you ever go to school here?

A. Yes, sir; I went to school. I learned nothing.

Q. Stop laughing a while. Frank, where do you live?

A. 145 Union Street.

Q. Are you familiar with the premises 138 Union Street?

A. Yes, sir.

Q. With whom do you live at 145 Union Street?

A. Only across the street.

- Q. Whom do you live at 145 Union Street with?
 A. With my father and mother.
 Q. All right; that is what I want.
 A. Oh.
 Q. Do you work?
 A. Sure I am working.
 Q. Whom do you work for?
 A. I am working for Hill Brothers.
 Q. What do you do there?
 A. Running a tank.
 Q. What do Hill Brothers do; what kind of a business?
 A. Making citron, candy.
 Q. How long have you worked for Hill Brothers?
 A. Six months.
 Q. Do you know the house at 138 Union Street?
 A. Yes, sir.
 Q. Did you know it on the 16th of January, 1922?
 A. Yes, sir.
 Q. Did you go up and down past there on a good many occasions?
 A. Sure.
 Q. In the month of January?
 A. Yes, sir.
 Q. I show you this picture, defendant's Exhibit A and ask you to look at that picture?
 A. Yes.
 Q. Is that picture a correct representation of 138 Union Street on the 16th of January, 1922?

Mr. Brancato: I object to the question as leading.

The Court: Objection overruled.

A. No.

[fol. 507] By Mr Price:

- Q. It is not correct? What is different about it?
 A. I know this window for about eight months covered up with papers.
 Q. That is, for about seven or eight months from now these windows were covered with paper?
 A. Yes, sir.
 Q. Before the 16th of January, 1922, was this window "B" on Defendant's Exhibit A broken in the corner?
 A. No, sir.
 Q. Were you down in the neighborhood at the time that the shot was fired on the night of the 16th?
 A. No, sir, I was not.
 Q. Did you see it after the 16th?
 A. I passed it after I saw——
 Q. (Interrupting.) Is this a correct representation of 138 Union Street after that night?

A. When I passed on the night, the second night I passed, I saw the window broke.

Q. In this corner?

A. Yes, sir.

Q. Did you see any other window broken down in those premises?

A. No.

Q. With the exception of the broken window here in the corner, this Exhibit A was a correct representation of 138 Union Street before the 16th of January, wasn't it?

A. No.

Q. What is different about it? Do you understand my question?

A. Yes, I understand.

Q. All right.

A. When I passed it a couple of times I saw the window about seven or eight months ago covered up with the paper. The same night I passed and in the morning I came down the house, I saw this window pasted. That is all I know.

Q. That is the window, that is the broken window?

A. Yes, sir; that is all I know.

[fol. 508] Mr. Price: That is all.

Cross-examination by Mr. Brancato:

Q. Now, Mr. Lima, you say that you saw the windows covered up with paper?

A. Yes, sir.

Q. What kind of paper?

A. It is paper. I don't know what kind of paper. It is paper. That is all I know of it.

Q. Is it paper?

A. Covered up inside so that when a guy is walking outside, you cannot see inside.

Q. When a guy goes inside you cannot see outside?

A. A fellow from outside cannot see inside.

Q. Where were you born?

A. On the other side, in Italy.

Q. Where in Italy?

A. Palermo.

Q. That is the same city Pace comes from?

A. Who?

Q. Pace?

A. I don't know who it is.

Q. You don't know Pace at all?

A. I don't know.

Q. You know Tommy Allen, don't you?

A. I don't know anybody. When I came over here I saw a kid—

Q. Don't you know Tommy Allen here?

A. No.

Q. Did you ever sell any junk?

A. I don't know the fellow.

Q. Did you ever sell any junk?

A. No.

Q. Did you ever sell any stuff?

A. Never.

Q. You know what I mean, don't you?

A. No, I never. I work; I go to work in the shop.

Q. Did you ever sell it?

A. No.

Q. It is bad stuff, isn't it?

Mr. Kesselman. Oh, I object to that upon the ground that it is argumentative. What does he mean?

[fol. 509] Mr. Brancato: Don't you tell him. I ask the Court to instruct counsel to object to the question in the proper way.

Mr. Price: I object to the question on the ground that it is improper and means nothing.

The Court: I understood you to say that you will put it in another way.

Mr. Brancato: No, let him put his objection in a formal way.

Mr. Price: I object to it on the ground that the question does not mean anything.

The Court: Objection overruled.

Mr. Price: I except.

(The last question was repeated by the reporter to the witness.)

By Mr. Brancato:

Q. Isn't it?

A. What do you mean?

Q. Junk?

A. I don't see no junk. What junk?

Q. Don't you know what I mean by "junk?"

A. I don't know what you mean by "junk."

Q. Did you ever sell the stuff?

A. What stuff? I don't know what is the stuff.

Q. Did you ever have a sniff?

A. A sniff? No.

Q. Have you ever sniffed junk?

A. No.

Q. How old are you?

A. Twenty.

Q. You know Agnello?

A. I don't know him.

Q. Do you know him? Do you know "Tommy?"

A. No, sir.

Q. Or Frank?

A. No.

Q. Or Alba?

A. No.

Q. Where does he live?

A. Who? I don't know nobody. Where does he live? I know I live on Union Street; that is all I know, 145.

[fol. 510] Q. That is opposite 138, isn't it?

A. No, 145.

Q. I say it is opposite 138, isn't it?

A. Oh, do you mean opposite?

By the Court:

Q. Where do you live?

A. I live at 145.

Q. Is that opposite 138, across the street from 138?

A. Yes, across the street, three houses down.

By Mr. Brancato:

Q. You often go in there, don't you?

A. In there? Never. I passed up and down when I ain't working. When I work I go down in the morning, in the night and day.

Q. 138 Union Street, that is where Mr. Alba lives, isn't it?

A. Yes.

Q. The house with the iron fence around it?

A. Yes, sir.

Q. That is what they call a "neighborhood house," isn't it?

A. Yes, a neighborhood house there too.

Q. That is the neighborhood house?

Mr. Price: No, he says a neighborhood house there too.

A. There is a club over there, a neighborhood house.

By Mr. Brancato:

Q. Isn't 138 called a neighborhood house?

A. No, sir.

Q. Where is the neighborhood house there?

A. Two houses from 138, two houses up.

Q. 140?

A. 138.

Q. 138 is the neighborhood house?

Mr. Price: No, I submit he said it is two houses up.

[fol. 511] A. Two houses up.

Mr. Price: Don't take advantage of the witness.

Mr. Brancato: Don't be telling this man what to say.

A. Two houses up.

Mr. Price: You are taking advantage of him.

Mr. Brancato: No advantage at all.

By Mr. Brancato:

Q. Where is the neighborhood house?

A. The neighborhood house is two houses up.

Q. From where?

A. From Union.

Q. Up Union Street where?

A. Union and Hicks.

Q. You say it is two houses up, from where?

A. What do you mean, from where? From 138 it is two houses up.

Q. Towards Hicks Street or towards Columbia?

A. Up Hicks.

Q. Up towards Columbia or Hicks?

A. Hicks, Hicks, up, up.

Q. How long have you known Mr. Alba?

A. Oh, I know him about nine years.

Q. You know him now?

A. Sure.

Q. You know his family?

A. I know only the son.

Q. Know who?

A. The son, that is all.

Q. Did you ever go into his place?

A. No.

Q. Did he ever come to your house?

A. No.

Q. How do you know him?

A. Because I live on Union Street.

Q. Is that the best reason you can give?

A. When he saw me, he says, "Frank," and I say "Hello."
[fol. 512] Q. You talk to him once in a while?

A. No, sir.

Q. You do not?

A. No, sir.

Q. You never talk to him?

A. No, sir.

Q. Did you ever speak to him about this case?

A. No, sir.

Q. Did you ever speak to "Tommy Allen" about the case?

A. No.

Q. Who is Tommy Allen?

A. I don't know who it is.

Q. What do you say "No" for? You know Agnello, don't you?

Mr. Price: I submit that he has asked that three or four times and the witness has answered the question.

The Court: He may answer once more.

A. I cannot speak very good English.

By Mr. Brancato:

Q. You are speaking it all right.

A. I cannot speak very good English.

Q. Do you know Tommy Agnello?

A. I don't know who is the guy.

Q. Stand up, Agnello, Tom, please.

(Agnello stands up.)

Q. You know him don't you?

A. No, I don't know him.

Q. Are you sure about that?

A. No.

Q. Never met him?

A. No.

Q. Never spoke to him?

A. No.

Q. All right. Do you know his brother Frank?

A. No, sir.

Q. Never spoke to him either?

A. No.

Q. Do you know Centorino?

A. No, sir.

Q. Never spoke to him?

A. No.

Q. Do you know Pace?

A. No.

Q. Never spoke to him?

A. No, sir.

[fol. 513] Q. Did you ever speak to Alba?

A. No.

Q. How did you come here today?

A. Because he told me to come here as a witness.

Q. Who told you?

A. The party——

Q. Who?

A. The guy that is——

Q. What is the guy's name?

A. I don't. I tell you I don't know the name.

Q. Where does he live?

A. At 138 Union.

Q. Did he come to your house and talk to you?

A. No, he saw me in the street.

Q. What kind of a looking fellow is he?

A. I cannot tell what kind of a looking fellow he is.

Q. You don't know his name? Did you ever see him before?

A. Sure.

Q. What is his name?

A. Joe.

Q. Joe what?

A. I don't know the second name.

Q. What is his nickname?

A. I don't know.

Q. What did he say to you when he asked you to come here?

A. What did he say to me?

Q. Yes?

A. He told me "How long did you see those windows?" I told him about seven or eight months, the window covered up with paper.

Q. What kind of paper was on those windows?

A. White paper. I don't know what kind of paper because I never went in.

Q. When did you see those windows the first time?

A. I saw them every day because I lived there.

Q. Did you look at the window every day?

A. Yes, sir.

Q. You looked for a cut in the glass every day?

A. When I was looking, the glass was fixed right, see? After when there was an explosion, I passed it again and I saw the window broke; that is all I saw.

[fol. 514] Q. When did you see the window broken?

A. Two weeks now.

Q. I said when did you see the window broken?

A. Two weeks.

Q. Two weeks ago, that was the first time that you saw the window broken, two weeks ago?

A. Yes, sir.

Mr. Brancato: That is all.

Mr. Price: Bring Mr. Alba in.

(Mr. Alba was brought into the Court Room.)

By Mr. Price:

Q. Is this the man that you mean, "Joe"?

A. Yes, sir.

Q. He spoke to you about the window?

A. Yes, sir.

Mr. Price: That is all.

By Mr. Brancato:

Q. Did you get a subpoena to come here; did you receive a subpoena to come here in Court today?

A. No, sir.

Mr. Brancato: All right; that is all.

JOSEPH ALBA, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. The defendant on trial, Alba, is your father?

A. Yes, sir.

Q. Do you live at 138 Union Street?

A. No, sir.

[fol. 515] Q. Where do you live?

A. 73 Van Brunt Street.

Q. How far from 138 Union Street is 73 Van Brunt Street?

A. Two blocks.

Q. Do you know your father's business?

A. Yes, sir.

Q. What business is your father in?

A. Confectionery, baker, that is cakes.

Q. Italian pastry?

A. Yes, sir.

Q. Where does he conduct that business?

A. Well, 138 Union Street.

Q. Did he formerly have a store across the street at 143 Union Street?

A. Yes, sir.

Q. How often during the last year have you visited at your father's house, 138 Union Street?

A. Well, I go up pretty nearly three or four times a week.

Q. Were you there three or four times a week during the month of January, 1922?

A. Yes, sir.

Q. Were you around there about January 16th, 1922?

A. I was on the corner of Columbia and Union.

Q. At the time that your father was arrested?

A. Yes, sir.

Q. Had you been to your father's house that day?

A. As soon as I saw my boy running down crying——

Q. I say, had you been to your father's house before that?

A. I was there three days before that.

Q. You were there three days after?

A. Yes, sir.

Q. Making it the 16th, after your father was arrested?

A. Yes, sir.

Q. Did you go up to your father's home at that time?

A. I went to my father's home because——

[fol. 516] Q. (Interrupting.) Did you, yes or no?

A. Sure, I went the 16th; I was in the house.

Q. I show you this paper, defendant's Exhibit A and ask you if that correctly represents your father's home at 138 Union Street immediately after the shot was fired and your father was arrested?

A. Yes, sir.

Q. Was the paper which was on the window "A" and "B" there at that time?

A. Yes, sir.

Q. Had it been on those windows before that time?

A. Yes, sir.

Q. How long before?

A. Fourteen months and over.

Q. Now, when you got up to your father's home right after the shot was fired and your father was under arrest, did you look at the window "B" on that photograph?

A. Yes, sir.

Q. Was there anything in the front of the window?

A. A pushcart.

Q. I show you this photograph, Defendant's Exhibit D, for identification and ask you whether that correctly represents the way the pushcart was before the window on that night?

A. This is just the way I saw the pushcart standing in front of the window that night.

Q. Is that the kind of pushcart it was?

A. Yes, sir.

Q. Does that correctly represent the condition there that night?

A. Yes, sir.

Mr. Price: I offer it in evidence.

Mr. Brancato: No objection.

The Court: Received.

(The photograph was marked in evidence Defendant's Exhibit D.)

[fol. 517] By Mr. Price:

Q. I show you this photograph, defendant's Exhibit B for identification and ask you if that correctly represents the window through which the shot had been fired?

A. Yes, sir.

Q. As it was the night of January 16th when you got there?

A. Yes, sir.

Q. Was the paper on there as it is shown in this photograph?

A. Yes, sir.

Mr. Price: I offer the photograph in evidence.

Mr. Brancato: Put it in as long as you don't testify yourself.

Mr. Price: No, I am not going to testify.

The Court: Received.

(The photograph was marked in evidence Defendant's Exhibit B.)

By Mr. Price:

Q. I show you this photograph which is now marked Defendant's Exhibit C in evidence and ask you if that correctly represents your father's kitchen window?

A. Yes, sir.

Q. There that night?

A. Yes, sir.

Q. The night of January 16th, 1922?

A. Yes, sir.

Q. Was this paper which was on in the same condition?

A. Yes, sir; in the same condition.

Q. How long before January 16th, 1922, was the paper put on there?

A. That paper would be put on there over a year.

Q. Over a year before that?

A. Yes, sir.

Q. Who put it on?

A. Myself.

Q. You put it on yourself?

A. Yes, sir.

[fol. 518] Q. What kind of paper is it?

A. It is like checks paper.

Q. In blocks, is it?

A. No, a roll. You could put it on the window.

Q. Paste it on the window?

A. Yes, sir.

Q. You pasted it on?

A. Yes, sir.

Q. Was the iron railing around the window, Defendant's Exhibit B, the same as it is now there that night?

A. Yes, sir; the same.

Q. Was it in the same condition there that night?

A. Yes, sir.

Q. Did you look at this window that I hold my finger on there that night? This window up here?

A. Yes, sir.

Q. Was there any hole of any kind whatsoever in that window?

A. No, sir.

Q. Was the glass broken out of that window?

A. No, sir.

Q. Will you put your initial "J" on the windows that you have just looked at? Can you write?

A. Sure I can write.

Q. Put a "J" on that window where you looked.

(Witness does as requested.)

Q. Now, the window which you have indicated with the "J" was not broken that night?

A. No, sir.

Q. Was it broken the next day?

A. No, sir.

Q. Was there any shot fired through it that you could see?

A. No, not through there.

Mr. Brancato: How does he know if the shot was fired, if he was not there at all.

Mr. Price: If the window was not broken, the shot could not be fired.

Mr. Brancato: The kinds might have thrown a pebble through it.

[fol. 519] By Mr. Price:

Q. When you came up to your father's house had you heard a shot?

A. Yes, I did hear a shot.

Q. You said at the time that you heard the shot, you had been at the corner of Columbia and Union Street?

A. Yes, sir.

Q. Just about a half a block from your father's home?

A. Yes, sir.

Q. You did hear a shot?

A. Yes, sir.

Mr. Brancato: He heard a shot.

By Mr. Price:

Q. When you heard the shot you went right up to your father's home?

A. Yes, sir.

Q. When you got to your father's home, did you see the defendants, there, all of the defendants?

A. Yes, sir; I did.

Q. And did you see the agents there?

A. Yes, sir; I did.

Q. Did you go in the house?

A. Yes, sir.

Q. Did you watch what was going on?

A. Yes, sir.

Q. Did Officer Manning, or Officer Oyler, take the defendant Thomas Agnello into another room away from the rest of the crowd?

A. They were all in the one room.

Q. Was anybody taken away from the one room?

Mr. Brancato: If the Court please——

A. No, sir.

Mr. Brancato: If you are going into that, don't testify for him.

The Court: Go right along with the direct examination.

[fol. 520] Mr. Brancato: I object now at this time, and submit that they should not be led.

The Court: Those questions were leading, so be careful now if you are going on with this, to have him state what occurred.

By Mr. Price:

Q. Did you see the officers take any of the defendants away from the room that they were in into another room?

A. No, sir.

Q. Were any of the defendants taken out of the room that they were in?

Mr. Brancato: I object to that, if the Court please.

The Court: Let him state what he saw. Objection sustained.

Mr. Price: I except.

That is all.

The Court: Is this cross examination apt to be long?

Mr. Brancato: Yes.

The Court: One of the jurors has an appointment with his physician and I think we had better adjourn for the day. We will reconvene tomorrow morning at ten, not at half-past ten, but at ten o'clock.

Case adjourned to March 17th, 1922, at 10 o'clock A. M.

[fol. 521] Brooklyn, N. Y., March 17th, 1922—10 o'clock a. m.

Before Hon. Garvin, J., and a Jury

Appearances: Same as heretofore.

JOSEPH ALBA, recalled to the stand as a witness for the defendants, testified further as follows:

Mr. Price: May I ask one more question before Mr. Brancato cross examines him?

The Court: Certainly.

By Mr. Price:

Q. Did you at my request make a search for the bullet that was imbedded in the wall of your father's home last evening?

A. Yes, sir.

Mr. Brancato: I object to that, if the Court please.

The Court: I think that form of question is objectionable. You can have him describe what he found in the physical condition of the house, but if he did not see a shot fired——

Mr. Price: He heard it; he came there right after.

The Court: You mean to have him describe what he saw immediately after the shot was fired?

Mr. Price: No. I asked him if he went there last night.

(Question withdrawn.)

By Mr. Price:

Q. Did I ask you to do something for me last night when you left the court room?

A. Yes, sir.

Q. As the result of what I asked you, what did you do?

[fol. 522] A. I looked around the room and I found the bullet on top of the fireboard in the next room, where the glass is, not in the kitchen, the next room.

Q. I will show you a photograph and ask you to tell me in what room you found the bullet?

A. In this room (indicating).

Mr. Price: The witness indicates room "B."

By Mr. Price:

Q. Where was it in the room "B" that you found the bullet?

A. On the right-hand fireboard, because it is on that side.

Q. Have you the bullet with you?

A. Yes, sir, I have.

Q. Produce it, please.

A. (Witness produces a bullet.)

Q. Did you find any other bullets in that room?

A. No, sir.

Mr. Price: I offer it in evidence.

Mr. Brancato: I have no objection. I do not see that it is material.

The Court: Received.

(Bullet marked Defendant's Exhibit F in evidence.)

Mr. Price: That is all.

Cross-examination by Mr. Brancato:

Q. You found that bullet, you say, in the room "B"?

A. Yes, sir.

Q. It was simply laying there, was it?

A. Well, it was behind a glass there.

Q. Behind a glass, what kind of a glass?

A. Table glass.

[fol. 523] Q. A glass like that is (indicating)?

A. No, they are different glasses.

Q. What kind of a glass?

A. With a handle on it.

Q. Simply on the fireboard?

A. On the top of the marble board, against the wall.

Q. You went and looked around?

A. I went around all over.

Q. You found it there?

A. Yes, sir.

Q. It has been there since January 16th?

A. I guess so.

Q. As far as you know?

A. Yes, sir.

Q. What kind of a house is that, 138?

A. Family house.

Q. A tenement house, isn't it?

A. A tenement house, sure.

Q. How many families live there?

A. Every floor.

Q. How many floors are there?

A. Well, there is four floors, three on top, one on the bottom.

Q. How many families on each side?

A. Parlor floor two families up front where Mr. Stephen Alba lives.

Q. How many families on each floor?

Mr. Price: He has answered that.

A. I will answer you if you will excuse me a moment.

By Mr. Brancato:

Q. Answer my question without any speeches. How many families on each floor?

A. On the parlor floor, two families; on the first floor, the nephew of Alba lives there; he is on that floor, and the other floors, two families.

[fol. 524] Q. So there are two, four, five, seven families in the house?

A. Yes, sir.

Q. Your father occupies the ground floor?

A. The ground floor, front.

Q. Consisting of four rooms?

A. Yes, sir.

Q. The kitchen, this room next to the kitchen, a sort of dining room, is it?

A. Yes, sir.

Q. Then the bedroom behind that?

A. Yes, sir.

Q. And a room behind the kitchen?

A. Yes, sir.

Q. There is some furniture in this room where you found the bullet?

A. Tables and chairs, iron tables, iron chairs.

Q. A few chairs?

Mr. Price: He said iron chairs.

A. A couple of chairs.

By Mr. Brancato:

Q. How many tables?

A. Two or three.

Q. How many?

A. Two tables, almost half a dozen iron chairs, a trunk.

Q. A trunk also?

A. There is what we call a fireboard near the window, there is another fireboard where he keeps all sort of stuff, colors, and essences for the business.

Q. What kind of colors are they?

A. Red, green, yellow, all of the different colors.

Q. Does he keep any alcohol there?

A. No, sir; don't need any alcohol.

Q. You emphasized the "No, sir," did you not?

Mr. Price: I submit that is improper.

A. Why,—well, Mr. Brancato, it is my own trade too. I suppose I know my own trade is confectionery.

[fol. 525] By Mr. Brancato:

Q. You keep colors?

A. Of course you need an egg shell color.

Q. You said yesterday, I think that your son, somebody, came up, ran to you and said something had happened down to your father's?

A. I had been standing on the corner of Columbia and Union Street—

Q. Will you answer my question? Did you say your son came and told you that there was something the matter in your father's house?

A. I said I was going up and my son was coming down.

Q. Where?

A. From the father's house.

Q. From the father's house?

A. To see me.

Q. Where were you?

A. I was going up, going to the house.

Q. On what street?

A. On Union Street.

Q. Near what street?

A. It is Columbia and Union, ain't it?

Q. I am trying to find out from you where it was. Don't argue with me.

Mr. Price: I submit that is improper.

The Court: Objection sustained.

A. Union and Columbia.

By Mr. Brancato:

Q. Union near where?

A. Near Columbia.

Q. How far from Columbia Street were you?

A. Where Sessa's Bank is.

Q. I am very wise now. How far is Sessa's Bank from your father's house?

A. Exactly I cannot tell, may be six buildings away.

Q. Now, Sessa's Bank is between Hicks Street and the one next [fol. 526] to that running towards Court Street, isn't it?

A. No, when I came—Sessa's Bank is very near Columbia, Hicks and Columbia.

Q. Coming over from Court Street, going down to your father's house from Court Street, name the streets after Court?

A. Clinton, Henry, Hicks and Columbia.

Q. And Sessa's Bank is on Union Street between Hicks and what?

A. Hicks and Columbia.

Q. And your father's house is where?

A. Between Hicks and Columbia.

Q. Only it is further towards Columbia than Sessa's Bank?

A. No, my father's house is nearer Hicks Street and Sessa's Bank is nearer Columbia.

Q. Then you were coming from Columbia towards Hicks, towards your father's house?

A. Yes, sir.

Q. You were near Columbia, near Sessa's Bank when you heard the shot?

A. No, when I heard the shot I was on the corner of Columbia and Union.

Q. Columbia and Union Street?

A. Yes, sir.

Q. Didn't you say that your son or child came down and told you?

A. When I heard the shot, why I went and as I saw the crowd, I saw my son coming down and my son met me right at Sessa's Bank.

Q. That is near Columbia Street?

A. Yes, sir.

Q. He told you that your father was in—some trouble in your father's house?

A. He says, "Some trouble in my father's house."

Q. At the time that you say your son came and told you that there was some trouble at your father's house, had the shot been fired, as far as you know?

A. Sure, there was a shot.

Q. The shot had been fired?

A. Yes.

[fol. 527] Q. That is right?

A. Yes.

Q. How long before had the shot been fired?

A. Not two minutes.

Q. So at that time you had not reached Sessa's Bank when you heard the shot?

A. When I heard the shot I was on the corner of Columbia and Union.

Q. You heard a shot?

A. Yes, sir.

You came to the house?

A. Yes, sir.

Q. When you got up to the house, did you go inside in the hall?

A. I went through the hall, yes, sir.

Q. You found two men there, didn't you, at the entrance to your father's apartment?

A. Sure.

Q. There were two men there watching the door?

A. Inside, not outside.

Q. Those two men, what did they do when they saw you?

A. Raised my hands up.

Q. Both hands up?

A. Yes, sir. There was only one man that makes me hands up.

Q. Did they take you inside?

A. I stood right in the kitchen in the left hand, near the ice box.

Q. They asked you some questions, didn't they?

A. They did not ask me any questions—"Who are you?" they said. I said, "I am the son."

Q. After you told them you were his son, they told you to get out, did they?

A. No, sir; "Stay where you are."

Q. How long did you stay there?

A. Until they went out.

Q. They did not take you with them?

A. No, sir.

Q. They told you you could go?

A. When they went out.

[fol. 528] Q. They told you you could go?

A. Nobody told me I could go, but "Stay where you are."

Q. They did not arrest you, did they?

A. The detectives say—

Q. They did not arrest you, did they?

A. No, sir.

Q. That is an answer.

A. They left me in the house.

Q. But they arrested your father?

A. Yes.

Q. And the other four defendants who are on trial now?

A. Yes, sir.

Q. Took them all in?

A. Yes, sir.

Q. They were in the "B" room next to the kitchen, weren't they?

A. Yes, sir.

Q. You saw them there, didn't you?

A. Yes, sir; I did.

Q. Do you know these men?

A. I know them. Stephen Alba is my father: Centorino, my best friend, I know three of them, being there with me every day on Columbia Street.

Q. You say Centorino is your best friend?

A. Yes, sir.

Q. He is a good friend of your father's too?

A. Well, if he is the best friend of mine I guess he must be.

Q. You guess so?

A. He is.

Q. Quite chummy?

A. I don't get you.

Q. You are very friendly?

A. Why, sure.

Q. Ever sell any narcotics?

A. Who?

Q. You?

A. What is it?

Q. I say did you ever sell any narcotics?

A. I am asking you what it is?

Q. Don't ask me? Answer the question.

Mr. Price: I submit that before he is required to answer the question he must be apprised of it. The man says he does not understand what narcotics is.

[fol. 529] The Court: Objection sustained.

By Mr. Brancato:

Q. Do you sell any junk?

A. What junk?

Q. You don't know what that is either?

A. No, I don't.

Q. Did you ever hear the word "narcotics"?

A. No, sir.

Q. Never heard of it?

A. No.

Q. Do you know your father is charged with selling narcotics?

A. No.

Mr. Kesselman: Objected to on the ground that it is incompetent, irrelevant and immaterial and not within the issues here.

The Court: Objection overruled.

Mr. Kesselman: Exception.

By Mr. Brancato:

Q. Do you know that your father is charged with selling narcotics?

Mr. Kesselman: I renew my objection.

Mr. Price: I want him to specify, what does he mean, here today? Is that what you mean?

Mr. Brancato: Of course——

Mr. Price: I object to the question unless he makes it definite and certain in this case.

The Court: I mean in this case; I do not mean in any other case.

The Court: In this case.

(The last question was repeated to the witness by the reporter.)

By Mr. Brancato:

Q. In this case.

A. After the lawyer told me.

[fol. 530] Q. What lawyer?

A. (Witness points.)

Q. When?

A. When I went up to see him; when I have been up to the lawyer's office.

Q. Then you know what narcotics are?

A. No, sir; I don't.

Q. You said the "lawyer told me"?

A. The lawyer told me the word but I don't know what the stuff is.

Q. I am asking you, don't you know what narcotics are; you said that you did not, then you say that you do know after the lawyer told you.

Mr. Price: No, sir; I submit that is not——

The Witness: I did not say it.

The Court: No, he says he did not say it.

By Mr. Brancato:

Q. Do you know what narcotics are?

Mr. Price: I object to it on the ground that he has already answered that he does not.

The Court: Objection sustained.

By Mr. Brancato:

Q. Do you know what cocaine is?

A. No.

By the Court:

Q. Did you ever hear of the word until just a minute ago?

A. I have not heard the word, and I don't know what the stuff is.

Q. When did you hear of it the first time?

Q. When I was up to the lawyer's office.

Q. How long ago?

A. Two weeks ago.

[fol. 531] By Mr. Brancato:

Q. That is the first time that you ever heard the word "cocaine" was two weeks ago, in the lawyer's office?

A. Yes, that is true.

Mr. Brancato: That is all.

Redirect examination by Mr. Price:

Q. I neglected on direct examination to have you tell me everything that took place in the room while you were there?

A. No, sir.

Q. Listen to my question, Mr. Alba. Will you please tell these gentlemen everything that took place in the room when you came in?

Mr. Brancato: If the Court please, is he going to break the rule that you cannot bring in new matter on re-direct examination?

The Court: Well, counsel states that he omitted something by mistake. So long as you exercise ordinary precaution, not to do it too often, the Court will permit it.

Mr. Price: I will withdraw the last question.

By Mr. Price:

Q. When you got in you saw your father there, did you?

A. Yes, sir.

Q. And did you see Officer Manning there?

A. When I went in the door, why Officer Manning told me to raise my hands up.

Q. After that did you see Officer Manning near your father?

A. Yes, sir.

Q. At that time will you please tell the jury what happened?

A. Oh, at that time there was Pasquale—that I do know now the [fol. 532] name, Napolitano, right in the door——

Q. (Interrupting.) What door?

A. As soon as you come in the kitchen.

Q. Room "A"?

A. In the kitchen room. I was standing near the ice box on the left hand side in the kitchen. I saw the detective—I cannot remember, know his name—sitting right over there—talking to Pasquale in his ear, and he started to put his hand in his pocket and he pulled out a bundle; I don't know what was in it; handed it over to the detective.

Q. When you say "the detective," whom do you mean?

A. Right there. (Indicating.)

Q. Come down and point him out.

A. (Witness does as requested.)

Mr. Price: For the record, indicate that the witness put his hand on the shoulder of Coleman Manning of the Internal Revenue Department, Narcotic Squad.

By Mr. Price:

Q. Go ahead and tell us everything that you saw after that with reference to them?

A. After he had left, Napolitano walked in the other room.

Q. What room do you mean?

A. Next to the kitchen, where all the defendants was in there. Defendant Alba was sitting on top of the trunk. He told him to

get up and make him put up his arms again and put both hands in his coat pocket.

Q. Who did?

A. The detective.

Q. In whose coat pocket?

A. Stephen Alba.

Q. That is your father?

[fol. 533] A. Yes, sir. After putting them in, in his left hand he pulls out a roll.

Q. A roll of what?

A. of money with a rubber band on it. He went down through the other pockets in the right hand side and he found some more money. He said, "There is your money there." My father says, "No, that roll is not my money." The money that is mine is four dollars that I put in this pocket." He said, "No, you ain't got four dollars; you have three dollars." My father says, "I did not remember it, this morning I bought eggs and milk for the house," but he says, "that bundle ain't mine. The money that is mine is the three dollars." That they did not give him back.

Q. Did you see your father searched before that by Officer Manning?

A. Two times.

Q. How many times was he searched by Officer Manning before that?

A. It was two times before the last.

Q. When he was searched did Manning produce this roll of bills?

A. Not the first or second, it was the last time.

Mr. Price: Your witness.

Recross-examination by Mr. Brancato:

Q. Didn't you say before, when you went in, you were kept in the kitchen of that room?

A. Sure.

Q. Officer Manning said, "Hands up, hands up, stand there?"

A. Yes, sir.

Q. Could you see him search your father in the other room?

A. Why, sure, I am standing of the left hand by the ice box over there. You can see everybody in the next room.

[fol. 534] Q. You were standing in the kitchen and you could see into the next room, is that right.

A. Yes, sir.

Q. You saw Manning go to Napolitano and whisper in his ear?

A. Yes.

Q. And Napolitano took out a roll of something out of his pocket and gave it to Manning; that is right, isn't it?

A. Yes.

Q. And then Manning deliberately went to your father and you saw him being searched?

A. Yes.

Q. And he pulls a roll of money out of your father's pocket and says, "I got that money"?

A. Yes, sir.

Q. That is your testimony now, is it?

A. Yes, sir.

Mr. Brancato: That is all, sir.

JOSEPH FICHERA, called as a witness by the defendant, being duly sworn, testified as follows:

The Court: Can you talk English?

The Witness: No.

Direct examination by Mr. Price:

Q. How long have you been in America?

A. Nine years.

Mr. Price: We will see if we can get along.

By Mr. Price:

Q. Where do you live?

A. Union Street.

Q. What number on Union Street?

(The remainder of the examination was conducted through A. [fol. 535] O. Tucci, acting as interpreter.)

A. 134.

Q. Is that two doors away from the premises 138 Union Street?

A. Yes, two doors.

Q. Look at this picture, defendant's Exhibit A, please; were you familiar with the premises shown on that picture, 138 Union Street on the 16th day of January and prior thereto?

A. Yes.

Q. With the exception of the broken glass on the window "B" here is this a correct representation of Number 138 Union Street on January 16th and prior thereto?

Mr. Brancato: I object to the question as leading. Let him state what he knows about that picture. Do not point out specifically the broken glass there.

The Court: Yes.

By Mr. Price:

Q. Were you familiar with the two windows on the ground floor of 138 Union Street?

A. Yes.

Q. Were you familiar with them on the 16th of January, 1922?

A. Yes, sir.

Q. Will you describe the windows, please?

A. What month?

Q. January, 1922, this year?

A. You mean when this matter occurred?

Q. Are you familiar with the time of the shooting down there at 138 Union Street?

A. I was inside.

Q. Inside where?

A. At 134.

Q. At the time of the shooting?

A. Yes, I was inside; and I came out.

[fol. 536] Q. Did you hear a shot while you were inside?

A. Yes, from inside.

Q. And then did you come out?

A. I went out and I saw nothing and I went in again.

Q. When you came out, did you go up to or near 138 Union Street?

A. On the following day I did.

Q. Did you look at the windows on the following day, of 138 Union Street?

Mr. Brancato: I object to the form of the question as leading. Let him state what he saw if anything.

The Court: Objection overruled.

A. Yes, I looked at it. I saw one of the panes of glass broken downstairs.

By Mr. Price:

Q. Do you know who lived in that house on that floor?

A. Stephen Alba.

Q. When you looked and saw one of the glasses broken, did you notice whether or not the window was clear like this? Like this glass? (Indicating on photograph.)

Mr. Brancato: I object to the form of the question as leading. Let him state what he saw.

The Court: He may state in response to the question as framed.

A. They were not cleaned.

By Mr. Price:

Q. They were not cleaned; I did not ask you whether they were cleaned or not. You have been passing 138 Union Street for quite a while before January 16th?

A. Yes, sir.

[fol. 537] Q. When you went by you saw Alba's windows, didn't you?

A. Yes.

Mr. Brancato: Alba has gone out of the Court Room. I ask that all witnesses remain in the Court after they have testified.

Mr. Price: I want him as well as you do.

Mr. Brancato: I want him better than you do.

(The previous witness Alba was brought back to the Court room.)

By Mr. Price:

Q. When you walked past before January 16th, 1922, did you ever look into Alba's windows?

A. Yes, I did, because many times I went and got some of this pastry.

Q. Can you look in the windows?

A. No, could not.

Q. Why couldn't you look into the windows?

A. Why should I look through, if I was looking, going by there.

Q. I did not ask you why should; you said that you could not see through the windows; why couldn't you look through the windows?

Mr. Brancato: I object to that as leading. It is suggestive to the witness.

By the Court:

Q. Won't you describe to us the condition of the windows, in great detail, please.

A. I did not pay particular attention to it; the glass might have been dirty, or something; I did not pay any attention to them.

Q. As far as you know was there any difference between those [fol. 538] windows and the windows in this Court Room, except that the glass in those windows may have been dirty?

A. These are better.

By Mr. Price:

Q. Look at this picture——

Mr. Brancato: I object to the showing of the picture at this time.

By Mr. Price:

Q. Did you see this before——

Mr. Brancato: I object to showing any picture.

Mr. Price: All right. I will frame my question before you object.

By Mr. Price:

Q. Look at this picture——

Mr. Brancato: Don't show the picture now, if the Court please.

The Court: The jury has heard this testimony.

Mr. Brancato: I appreciate that. Why should——

The Court: Put your question.

By Mr. Price:

Q. Look at this picture and tell me if when you passed by after the 16th, this correctly represents the front of Alba's house?

Mr. Brancato: I object to that if the Court please. I object to showing the picture at this time. I further ask the Court to instruct [fol. 539] counsel if he is going to show a picture; let him stand here until the objection is made.

The Court: Do that, Mr. Price. The question is admissible. The objection is overruled. The witness may answer.

A. The glasses are the same.

By Mr. Price:

Q. With the exception of the hole in the glass, was it the same before the 16th of January?

Mr. Brancato: I object to the question as leading.

The Court: Objection sustained.

Mr. Price: I except.

That is all. Your witness.

Mr. Brancato: No cross examination.

Mr. Price: All right.

SANTO BELLOMO, called as a witness on behalf of the defendants and having been first duly sworn, testified as follows:

(Examined through A. O. Tucci, Interpreter.)

Direct examination by Mr. Price:

Q. Where do you live?

A. 132 Degraw Street.

Q. Do you know Stephen Alba?

A. Yes, sir.

Q. Do you know where his house is?

A. Yes, sir.

Q. Where is his house?

A. 38 Union Street.

Q. 38?

A. 138 Union Street.

Q. Have you ever visited Alba's house at 138 Union Street?

A. Yes, sir.

[fol. 540] Q. Did you visit it during the month of January of this year?

A. Yes, sir.

Q. Are you familiar with the windows in Alba's apartment; in the front of Alba's apartment on the 16th of January, 1922?

A. Yes, sir.

Q. Will you describe them to the jury?

A. The windows are then as they are today.

By the Court:

Q. What is their condition today?

A. The conditions of the windows are that the top are clear and the bottom there is some kind of a paper there so you cannot look through.

By Mr. Price:

Q. Was the paper on there before the 16th of January, 1922?

A. Yes, sir.

Q. Have you been to 138 Union Street since Alba was arrested, on the 16th day of January, 1922?

A. Yes, sir.

Q. When were you there after the 16th, the first time?

A. I did not write down the date when I went there.

Q. You heard that Alba was arrested, didn't you?

A. I know he was arrested but I don't remember the date.

Q. Was the paper on the windows when you went there after you heard Alba was arrested?

A. Yes, sir.

Q. I show you defendant's Exhibit A and ask you if this correctly portrays the premises as they were the day when you went there after Alba was arrested?

Mr. Price: Have you any objection to showing the photograph——
[fol. 541] Mr. Brancato: Not at this time. If you followed the same system before you would be all right.

A. (Witness looks at photograph.) Yes, with one exception here. There is a small pushcart that always stands in the front of that window which is not there now.

(The Court: Indicating with his finger room "B").

By Mr. Price:

Q. I show you defendant's Exhibit D, and ask you whether that correctly describes the front of Alba's house with the push cart that you have just spoken about?

A. Yes, that is the push cart; yes, sir; that is the push cart.

Mr. Price: Your witness.

Cross-examination by Mr. Brancato:

Q. What is our name?

A. Santo Bellomo.

Q. It means a pretty man, doesn't it? Now, are you also a Sicilian?

A. Yes, sir.

Q. What province do you come from?

A. Messina.

Q. Messina?

A. Yes.

Q. You know Mr. Alba, don't you?

A. Yes, sir.

Q. How long have you known him?

A. About six or seven years.

Q. Do you ever go in to see him in the house?

A. Well, I went up to see him when he had a confectionery store on Union Street; where he had confectionery in several places.

Q. How many places did he have confectionery stores, which you visited?

A. He had two other places. That is what I remember, with the exception—not including the one where he is now.

[fol. 542] Q. How often did you go to these confectionery stores?

A. Well, whenever I desired to eat some pastry I went over there or either go and get some to take up home.

Q. Where was the last place that he had before this one?

A. At 143 Union Street.

Q. When was that?

A. I don't remember exactly, but I know it is over a year.

Q. You went to this place at 143 Union Street a year ago or so, didn't you?

A. Yes.

Q. You went there often?

A. Well, I am not going to state the exact time. I know that it was when he had the confectionery store there.

Q. What kind of windows did he have in that confectionery store at 143?

A. That was a large window, a store window.

Q. How often did you go to 138 Union Street?

A. I never timed myself so far as that is concerned. I went over there when I felt like it, like eating pastry or either when I had the money so I could buy some and get it.

Q. How often did you feel like eating a piece of pastry or how often did you have the money that you felt like buying some?

A. Every week, every two weeks.

Q. You had no special time of going there?

A. No, sir.

Q. How many chairs are there in that apartment where you go in to buy these pastries at 138?

Mr. Price: When.

Mr. Brancato: Any time that he has gone in there; I don't care.

A. I don't have to count the chairs.

[fol. 543] By Mr. Brancato:

Q. How many tables were there?

A. There might have been three or four; I can't remember how many there were; I did not count them.

Q. How many pictures did they have on the wall?

A. I did not go over to look at the pictures; I went over to get pastry.

Q. Was there any carpet on the floor, or rugs?

A. No, sir.

Q. Where is the water faucet in that apartment; if you know; what room, at 138 Union Street?

A. As you go in at 138.

Q. Did you ever go there for a glass of water yourself?

A. I went over there also to buy pastry.

Q. Any fire escapes in that house, at 138?

A. I don't think there is.

Q. You don't think there is any there? You did not look for any fire escapes, did you?

A. Paid no attention but I am sure that there is not any.

Q. You are pretty sure that there is none there, aren't you?

A. I don't think so.

Q. But you did look for a hole in the glass and some curtains on the glass, didn't you?

A. Yes, that was a shot which had been fired through.

Q. That is what you had been told? Who told you?

Mr. Price: Let him answer.

Mr. Brancato: I thought he had answered.

Mr. Price: Let him answer.

By Mr. Brancato:

Q. That is what you had been told, yes or no?

A. Yes.

[fol. 544] Q. Who told you?

A. Mr. Alba.

Q. Which Alba, this man here, the defendant?

A. Yes, sir.

Q. When did he tell you that?

A. When I went there to buy some pastry.

Q. When did you go there to buy pastry at the time that he told you, what date?

A. I don't remember exactly the date but I think it was around the 22nd or the 23rd.

Q. How many days after his arrest did he tell you that?

Mr. Price: I submit that the witness has not testified that he knows the date of his arrest.

The Court: If he cannot state, he may of course tell us that he does not know when the arrest was.

A. I have told you that I don't know the date that he was arrested.

By Mr. Brancato:

Q. He was arrested on the 16th of January; how many days after that was it that Alba told you that a shot had been fired in that window?

Mr. Price: I submit that the question has been answered. He said around the 22nd or 23rd; he was not sure.

The Court: He may ask him again.

Mr. Price: I except.

A. About five or six days.

By Mr. Brancato:

Q. Did he ask you to look at the windows and come to Court to testify?

A. Yes, sir.

[fol. 545] Q. That is why you say now that there was a curtain or some kind of paper on the glass, isn't that so?

A. No, that paper was on there.

Q. Although you say that there are no fire escapes in that house?

A. No, sir.

Mr. Brancato: That is all.

Redirect examination by Mr. Price:

Q. I direct your attention to the part of Defendant's Exhibit D, that I am holding in my hand; do you know what that is?

Mr. Brancato: If the Court please, I think after counsel was instructed that he should not be allowed to show the picture unless a question was put to the witness—

Mr. Price (interposing): I did put a question to the witness.

The Court: I do not think the witness should hold the paper in his hand until the question is completed.

Mr. Price: Have it read and see if there is anything improper about it.

The Court: Very well, put the question, without the witness seeing any of that part. Show the exhibit.

(The last question was repeated by the reporter.)

Mr. Price: I am holding my hand over it.

By the Court:

Q. Do you know what that is? (Indicating a part of the picture.)

A. There is none down there on the bottom.

[fol. 546] By Mr. Price:

Q. What is it that I have my finger on?

A. That is a ladder there of some sort, but not down below there.

Mr. Price: That is all.

Mr. Brancato: That is all.

By the Court:

Q. Now, are you a friend of the defendant Alba?

A. I know him because I always went over there to buy pastry.

Q. Who asked you to come here and testify?

A. Mr. Alba.

Q. Do you know what the charge against the defendant Alba is here on this trial?

A. All I know that I heard that he was arrested, but I cannot state just exactly what for.

Q. What do you understand the charge is?

Mr. Price: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Court: Question withdrawn.

By the Court:

Q. Are you not able to state what you have heard the charge is against this defendant?

Mr. Price: I object to it upon the ground that it is incompetent, irrelevant and immaterial.

The Court: Question withdrawn.

By the Court:

Q. Did you ever hear of cocaine or morphine or heroin?

[fol. 547] Mr. Price: I object to the question on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: I except.

A. Yes, I have heard of them.

By the Court:

Q. Did you inquire what the charge is here against Alba in which you were asked to come to Court here and testify?

Mr. Price: I object on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: I except.

A. Yes, I heard that he was arrested about this—in connection with this cocaine—I cannot tell you all the names because I don't know anything about them.

By the Court:

Q. When did you first hear of cocaine?

Mr. Price: I make the same objection.

The Court: Objection overruled.

Mr. Price: I except.

A. I don't remember exactly what date it was.

By the Court:

Q. Did you ever hear the word before you heard it in connection with this charge against Alba?

A. Yes, I know, some kind of medicine.

The Court: All right. That is all.

Mr. Price: That is all.

Mr. Brancato: That is all.

[fol. 548] SALVATORE GIORDANNELLA, called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

(A. O. Tucci, acting as Interpreter.)

Direct examination by Mr. Price:

Q. What is your business?

A. Longshoreman.

Q. Where do you live?

A. At 134 Union Street.

Q. You know where the defendant Alba lives?

A. At 136 Union Street.

Q. Is it 136 or 138?

A. 136.

Q. How many doors from your house?

Mr. Brancato: I object to that, if the Court please.

The Court: Objection overruled.

A. Two doors away from me—no, it is 138.

By Mr. Price:

Q. How long have you lived at 134 Union Street?

A. Two years.

Q. Do you pass 138 Union Street where Alba lives, every day?

A. Yes, sir.

Q. Were you home on the 16th of January about between eight and nine o'clock?

A. Yes, sir.

Q. Did you hear a shot fired there that night?

A. Yes, sir.

Q. Did you go out on the street?

Mr. Brancato: Yes or no.

A. Yes, I went outside. I instantly—I right away went inside.

[fol. 549] By Mr. Price:

Q. You went back in your house? A. Yes, sir.

Q. When you have been passing Alba's house, as you have testi-

fied, every day, did you notice the condition of the windows in Alba's house? A. Yes, sir.

Q. Will you please describe the condition of the windows to the jury? A. The bottom glass there was some kind of paper in the back of it.

Q. Was that paper on before the shot was fired? A. That paper has been over there about seven or eight months.

Q. Is it on there now? A. Yes, sir.

Q. After the shot was fired, when next did you pass 138 Union Street. A. About a week or four days, I pass there all the time.

Q. Did you notice the condition after you heard the shot, of the windows in 138 Union Street?

Mr. Brancato: I object unless he specifies the time.

By the Court:

Q. What time was it that you heard this shot? A. It was about nine o'clock in the evening, but I don't remember the date.

Q. When after that time did you see the window next? A. The very next day. I pass there all the time.

By Mr. Price:

Q. What was the condition of the window? A. There is a hole there and it is cracked right through the center.

[fol. 550] Q. I show you defendant's Exhibit B and ask you if that correctly represents the window with the hole and the crack in it? A. Yes, sir.

Q. Was there any of the other glass in that window broken up on top, the top part of the window? A. No, sir.

Q. Are you sure that window has been covered that way for seven or eight months, with paper? A. Yes, sir.

Mr. Price: Your witness.

Cross-examination by Mr. Brancato:

Q. Are you working now? A. Yes, sir.

Q. Are you subpoenaed to come here in Court? A. No, Mr. Stephano called me.

Q. And he asked you to come to Court? A. Yes, sir.

Q. You left your employment to come to Court on his request? A. Yes, sir.

Q. Were you at the lawyer's office any time? A. Yes, sir; two weeks ago.

Q. Were you working that day? A. No, sir.

Q. You are also an Italian, aren't you? A. Yes, sir.

Q. A Sicilian? A. Yes, sir.

Q. What province do you come from? A. The province Syracuse.

Q. You were asked before to describe a window and the first thing that you said was that there was paper on the window, is that right? A. Yes, sir.

Q. Were you told that you were going to be asked a question, "Describe a window"? A. No, sir.

Q. Why did you say the first thing that you said was that there [fol. 551] was paper on the window, that is all that you said about the description of the window?

Mr. Price: No. He did not. He said it was the lower part of the window.

Mr. Brancato: After five or six minutes.

A. Because I saw it, I know that there is paper attached there.

By Mr. Brancato:

Q. Did you know when you came here to testify that you were going to be asked about the window? A. Yes, sir, I did.

Q. You talked about this with Alba, about the window, didn't you? A. No, sir.

Q. When did Alba speak to you first about coming here to testify about the window? A. About two or three weeks ago.

Q. How many floors are there at 138, do you know? A. I am not sure but I think it is three or four stories.

Q. There is an iron railing in front of 138, isn't there? A. Yes, sir.

Q. Is there any part of the iron railing that is broken or is it a good iron railing, unbroken at any part of it? A. I paid no particular attention to that.

Q. You did not pay any attention to the iron railing? A. I know that there is an iron railing.

Q. Except that there is an iron railing, you don't know that it is broken or not? Any part of it?

Mr. Price: He said so, didn't he?

Mr. Brancato: He can say it again.

[fol. 552] A. No, sir; I did not.

By Mr. Brancato:

Q. There is a door, a hall door, leading into the building at 138, isn't there? A. Yes.

Q. Were you ever inside Alba's apartment? A. Some Sunday I went over there to eat some of those cannolis, those cream rolls.

Q. How many doors did you go through from the time that you left the sidewalk in front of 138 until you got inside the kitchen?

A. The door which leads from the street; two doors.

Q. Where are they? A. One is—leads from the street and the other goes into the room.

Q. Into the room, into the kitchen? A. The first room.

Q. Are there fire escapes on your house, 134? A. Yes, sir.

Q. Do you know if there are any fire escapes in Number 138 where Mr. Alba lives? A. At the rear, yes. Not in the front.

Q. Not in the front. That is all.

Redirect examination by Mr. Price:

Q. Are you sure whether there are fire escapes in the front of 138 Union Street?

Mr. Brancato: I object, if the Court please; he said that there are no fire escapes in the front. Now that is clear. You cannot get away from that unless you want to tell him what the answer is.

The Court: Objection overruled.

(The last question was repeated by the reporter to the witness.)

[fol. 553] A. My knowledge is that I think all of the fire escapes are in the back of the houses.

By Mr. Price:

Q. You are not sure? A. I am not sure about the front part.

Q. Did I understand you to say that you went into Alba's home at 138 Union Street to buy pastry there? A. Yes.

Mr. Price: That is all.

Mr. Brancato: That is all.

GUISEPPE MONTAPERTO, called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Kesselman:

Q. What is your business? A. Grocer, wholesale and retail.

Q. Where is your place of business? A. 627 Hicks Street.

Q. Is that in the vicinity of Union Street? A. Yes, sir.

Q. How long have you been in business there? A. About ten years.

Q. Do you know the defendant Frank Agnello? A. Yes, sir.

Q. How long do you know him? A. About the same time, ten years.

Q. Do you know other people who know him? A. Yes, sir.

Q. Prior to the 16th of January did you ever have occasion to discuss with anybody in the neighborhood the reputation of Frank [fol. 554] Agnello? Did you ever talk about him, whether a good boy or a bad boy? A. Yes, always a good boy.

Q. What is his reputation for being honest and truthful? A. Honest boy.

Q. Is his reputation good or bad for those things? A. Good.

Q. Did he ever work for you? A. Yes, sir.

Q. How long? A. About two years.

Mr. Kesselman: That is all.

Cross-examination by Mr. Brancato:

Q. You said that you have spoken with other people about Frank Agnello's reputation, is that right? A. Yes, sir.

Q. You did speak with some people about his reputation? A. Yes, sir.

Q. Will you please mention some of the people with whom you have spoken about his reputation. A. Well, I always spoke to some people in my store.

Q. That is the best answer that you can give, that you spoke to some people in your store? A. Customers.

Q. When was that? A. Well, I always say; always, you know.

Q. You always speak about him? A. The time he left my store, I always say—always say, always good boy, honest boy with me.

Q. Do you know his parents? A. Yes, sir.

Q. How long have you known them? A. About ten years.

Q. And they asked you to come here and testify to his good character?

Mr. Price: "Who asked you?" I submit that is improper, except he specifies who he means by "they."

[fol. 555] The Court: The boy's parents.

By Mr. Brancato:

Q. The boy's parents, is that right? A. Yes, sir.

Q. You have known him for ten years? A. Yes, sir.

Q. He worked for you two years? A. Yes, sir.

Q. But you cannot give us the names of any persons with whom you have spoken about his good character? A. No, sir.

Q. You don't know that? A. No, sir.

Q. Isn't it a fact that you came here because you are a friend of the family? A. Yes, I am a friend of the family because I always deal with his mother at the time that I start in business. I bring groceries in to his mother. I know the boy is good and that is all.

Q. What is your business? A. Groceries, wholesale and retail.

Q. Wholesale and retail groceries? A. Yes, sir.

Q. Do you sell any liquor. A. No liquor.

Q. No liquor at all? A. Groceries, wholesale and retail.

Q. Does Agnello's mother buy from you? A. Yes, sir.

Q. Where does Agnello live? A. 167 Columbia Street.

Q. At the grocery store there? A. Yes, sir.

Q. They live in the back of the store; is that right? A. I tell you I have never been back of the store; only when I go there I go into the store, and I don't know who is in the back; whether they live in the back or not.

[fol. 556] Q. Do you know the whole Agnello family? A. Yes, sir.

Q. Do you know Tom also? A. Yes, sir.

Mr. Brancato: That is all.

Mr. Price: That is all.

ANTOMINO CENTORINO, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

(A. O. Tucci, acting as Interpreter.)

Direct examination by Mr. Price:

Q. Where do you live? A. 172 Columbia Street.

Q. The lady who testified here was your wife? A. My wife.

Q. Did you see a man in this court room by the name of—who said his name was Nunzio Dispenza? A. He is not here now.

Q. Did you see him here testifying in this case? A. Yes, sir.

Q. Did you know his name before he testified here in this case? A. Not as Nunzio.

Q. What name did you know him under? A. "Andy."

Q. Did you know that his other name, other than Nunzio, was Dispenza? A. I did not know his second name.

Q. Did you ever hear it before he took the witness stand and gave it here in Court? A. No, sir.

Q. When did you first meet Nunzio Dispenza, the man you have described as "Andy"? A. At my Godfather's house, Alba.

[fol. 557] Q. That is, the defendant Alba's house?

A. Yes, sir.

Q. 138 Union Street.

A. Yes, sir.

Q. When did you meet him for the first time?

A. It was on a Friday, on the 13th day of January.

Q. 1922?

A. Yes, sir; this year.

Q. Before we go into the details of the case, Alba, you say, is your godfather?

A. I want to explain that. When we say the word "Comparo" is does not signify the way we express it between ourselves, or among our selves, among friends, cousins and relatives, with one another, "Comparo," that does not mean that he or I have stood up for any of the children or that he has stood up for me as my godfather, it is only a sort of a family name for friends.

Q. A token of friendship, is that it?

A. For my father, I believe he was a godfather of one of the children or something to that effect. That name remains in the family. We call "Comparo" right along.

Q. Before the 16th of January, 1922, had you been a visitor at Alba's home?

A. Yes, sir.

Q. And were you familiar with the windows, the lower parts of the windows at 138 Union Street before the 16th and on the 16th day of January, 1922?

A. Why, yes, why not?

Q. Will you describe the lower part of the glass to the jury?

A. The ones above were all clear and at the bottom windows is a sort of paper with little squares on them.

Q. Was that the condition of the windows on the 16th of January, 1922, in the evening?

A. Yes, sir.

Q. I show you Defendant's Exhibit C and ask you if that cor-[fol. 558] rectly purports or portrays the window leading into the

kitchen of 138 Union Street, Alba's apartment, on January 16th and thereafter and before also?

Mr. Price: May I show it to the witness now?

The Court: Please do.

Mr. Price: Thank you.

A. If I am not mistaken I think this is the window that leads into the kitchen.

By Mr. Price:

Q. Does that correctly portray it as it was before and on and after January 16th, 1922?

A. Yes, sir.

Q. Now, I show you defendant's exhibit B and ask you if that correctly portrays the picture of the window leading from the room off of the kitchen after the shooting on the night of January 16th, 1922?

A. The windows was always in the same condition with the exception of the hole which is in there now.

Q. And also the crack which appears on the center of the glass?

A. Yes.

Q. I show you Defendant's Exhibit A and ask you if that correctly portrays the front of Alba's house on the night of January 16th, immediately after the shooting?

A. Yes, the conditions are the same with the exception that on that evening there was a pushcart in front of the railing.

Q. I show you Defendant's Exhibit D and ask you if that correctly portrays the front of Mr. Alba's home on the night of January 16th, 1922, after the shooting, showing the pushcart in front of the window?

A. Yes, exactly so.

[fol. 559] Q. You, as I understand it, testified that you met this man Nunzio, whom you described as "Andy" at Alba's home on the 13th of January, 1922?

A. Yes, sir.

Q. What time of the day or night did you meet him at Alba's home?

A. Around eleven o'clock, before noontime.

Q. Who was present at Alba's home when you met Andy there?

A. As I got to the door my Comparo opened the door.

Q. Who is your Comparo—you mean the defendant Alba?

A. Yes, sir.

Q. Then when Stephen Alba opened the door did you go into his home?

A. Yes, sir.

Q. What room did you go into?

A. The first room, the kitchen.

Q. When you got into the kitchen, did you see anybody else there?

A. Yes, sir; this man — that his name is Nunzio and Mrs. Alba.

Q. That is the man that you now know as Nunzio and Mrs. Alba?

A. I know—I found out that he was Nunzio.

Q. Was there anybody else in the kitchen but Mrs. Alba, Alba, Andy and yourself?

A. No, sir; us four.

Q. Did you remain in the kitchen or did you go into any other room?

A. No, I remained seated right close up to Mrs. Alba, as I was questioning her, asking her how she was getting along, for she is a sick woman, she is paralyzed.

Q. Did Mr. Alba and Andy stay in the same room with you or did they go into another room?

A. No, they were right near the table there all the time.

Q. In the kitchen?

A. Yes, sir.

Q. The kitchen is the room designated on Defendant's Exhibit A [fol. 560] by the letter "A"?

A. Yes, it is the first window from the door.

Q. Did you ever go out of that room, the kitchen there, that day of the 13th, or did Nunzio and Alba go out before Nunzio finally left the premises?

A. He went away first and then I went away.

Q. I mean did you go from the room "A" into the room "B" or did any of you, either Alba or Nunzio go into the room "B" while you were there that day?

A. No, sir; we remained there all the time.

Q. Now, will you please state to the Court and jury everything that Andy said to you, everything Andy said to Alba and the entire conversation as to what happened there on the 13th as you described?

A. First I was sitting near Mrs. Alba, talking to her, and I heard this man talking to my Comparo, Mr. Stephano, asking him if he had any cocaine. Of course, I believe that when I entered that room there, that discussion was—had started long before I got there.

Mr. Brancato: I object to that and move to strike out the answer.

The Court: Objection sustained. The last sentence is stricken out. "I believe what happened——" that is stricken out.

By Mr. Price:

Q. That is, when you got there, you found Alba talking to——

Mr. Brancato: I object to counsel leading the witness and telling him what to say.

Mr. Price: I am not telling him what to say.

[fol. 561] The Court: Ask him what occurred when he got there

Mr. Price: I am asking him the fact that he found two men talking.

The Court: That is suggestive of the answer. Just ask him what was occurring.

Mr. Price; No, I am asking for an answer. I am asking if that is a fact, that when he got there he found this man, Andy, talking to Alba.

The Court: You mean to say that is not suggesting of the answer as compared with the question, "What was occurring when you arrived there?"

Mr. Price: I am not asking for the contents of the conversation; I am just asking him if that is the fact.

Mr. Brancato: That is leading.

The Court: Objection sustained on the ground that it is leading.

Mr. Price: I except.

By Mr. Price:

Q. You testified that you believed that the conversation had started before you got there and the Judge struck that out——

Mr. Brancato: I object, if the Court please. He did not testify to that at all. He is certainly calling his attention to it.

The Court: That question is improper.

Mr. Price: May I not finish my question?

Mr. Brancato: I submit counsel——

The Court: It is perfectly apparent that it is improper in form as it is now.

[fol. 562] By Mr. Price:

Q. Were Nunzio and Alba talking when you got there?

Mr. Brancato: I object to the question upon the ground that it is leading.

The Court: Yes, it is leading. Let him state what was occurring first when he arrived at the premises. If it is believed by you that something was inadvertently omitted, you may direct his attention specifically to it.

Mr. Price: I except.

By Mr. Price:

Q. Didn't you just testify that you believed that Alba was talking——

Mr. Brancato: I object.

Mr. Price: I will withdraw the question.

Mr. Brancato: I will ask the Court to instruct counsel not to repeat that question again.

The Court: As a matter of fact the Court will punish counsel if the question is repeated.

Mr. Price: I did not repeat it. I just withdrew it.

The Court: The Court has ruled clearly in a way that the Court believes is perfectly intelligible to experienced counsel, such as you are, and the Court will not permit its instructions to be disregarded. Let us understand that clearly.

Mr. Price: I withdrew it, Judge. I did not repeat it, did I?
The Court: Very well.

[fol. 563] By Mr Price:

Q. Will you please state when you entered the premises on the 13th, as you have already testified, what Alba was doing and what Andy was doing?

A. When I got there I was sitting alongside of Mrs. Stephano, Mrs. Alba, and I heard Andy say, "Now, you have it. If you have not got it, why, you know some friends of yours that have it."

Q. Go ahead and tell us everything that happened?

A. Then my godfather said in my presence; he said, "Why, my boy, I never heard of such a thing before in my life; how did you permit yourself to come here and ask me for that stuff?"

Q. Go ahead.

A. (Continuing:) "Here in my house, all I can furnish you with is sugar, pastry or candies of all kinds."

Q. He said "Candies of all kinds?"

A. (By the interpreter.) They make those little candies, confettis. (Continued) And he said, "Why, in this section over here, particularly the Italian section, there is a lot of those Italians that traffic in that kind of a business?" And with that Alba said, "Why, with all this that you tell me now, I don't know anything about, nothing about it, because my business has always been about confectionery," and I noticed that my godfather over there answered rather mad when he made those answers to him. Then I said, "Comparo, godfather, what is it all about? What is this all about?" I said, "What is all this talking and hollering," and he answered, and said, "What do I know? I don't know what this man is talking about. He came here and asked me for cocaine or thought I [fol. 564] would say that I could get him some." And then Andy also stated that he had been arrested once in his automobile.

Mr. Brancato: I object, if the Court please. I think that is as much improper as it is to state what Andy said about these men having been arrested before.

The Court: No, this is a conversation.

Mr. Kesselman: You asked the specific question yourself.

The Court: This is between Andy and the defendants.

Mr. Brancato: So was Andy testifying to a conversation between him and the defendants. He said the defendant said so and so and that was stricken out.

The Court: No, this is proper and it may proceed.

By Mr. Price:

Q. Go ahead.

A. (Continuing:) That he had been arrested in his automobile with stuff in it. He stated that they confiscated his automobile with stuff, but I don't know how much money it cost him. Then I approached Andy and said, "Excuse me, I don't know your name,

what is it?" He said, "My name is 'Andy.'" And I said, "No, Mr. Andy, don't you see that you are annoying my godfather over here questioning him about this stuff over here after that he tells you that he does not know or knows what it is about, any of this stuff? Also he does not know anybody that has that stuff." Then he turned over to me and he said, "Well, you are a younger man, can't you do it?" Look around here and see if you can get some of [fol. 565] this stuff for me?" I said, "My friend, you are making a mistake. You don't know me. My godfather over here can tell you that I always worked in factories, longshoreman and other kinds of business where I had to labor. Neither do I know of anybody else that has anything of that kind." He said, "Why, it is possible that in a section of this kind you could not be kind enough to find some of that stuff for me? I thought you ought to be able to get it." I said, that it was impossible for me to obtain anything of that kind, the stuff that he wanted, for I did not know anybody that had it. Then he said, when he noticed that he could not convince us or get us to try to get any of the stuff for him. He said, "All right, don't be afraid, I will furnish you with some stuff," and he said, "I have some stuff over here and a buyer who was a dear friend of mine and he will not pay me the price that I intend to get for it. You represent yourself as the buyer directly——"

Mr. Brancato: I object to him stating as to representing himself, let him state what he said.

The Court: This is a statement which purports to represent a conversation between the witness and the other witness named "Andy." Objection overruled. He said he told that to Andy.

Mr. Brancato: If he tells what Andy says, all right. When he says that he represents himself as being so and so, that is a conclusion.

By Mr. Price:

Q. All right, state what Andy said about that to you?

[fol. 566] The Court: The answer was that you represent yourself as the direct buyer. He told Andy to represent himself——

Mr. Price: No, Andy told him to represent himself.

A. Centorino to represent himself as the direct buyer. Then, if we get it, I will tell you the price and I will figure on whatever price there is.

The Witness: No, no.

The Interpreter: That is just what you said.

The Witness: No.

The Court: What is this witness interrupting for? Did he interrupt you when you spoke English and say "That is not what I said?"

The Interpreter: Yes.

Mr. Brancato: Yes, sir.

The Court: Do you mean that you understand English?

The Witness: Not much.

The Court: If you understand, we will go along without an interpreter. If you cannot understand you may say so, but ordinarily I think you can speak well enough English to understand and answer the questions.

Mr. Price: We had some witnesses for the Government here that spoke English and yet we used an interpreter.

The Court: The interpreter will be kept right here available.

By Mr. Price:

Q. Can you state in English now about what Andy said to you [fol. 567] about representing himself as the seller?

A. He said, "You be, you make like you know, represent like a boss, see? You sell the stuff for me."

Mr. Price: We are not getting anywhere with this.

Mr. Brancato: I understand and I think the jury does.

Mr. Price: I did not raise a bit of a question, Judge, when Napolitano was on the stand.

The Court: Very well, interpreter. Let the record appear that the witness interrupted the interpreter as the interpreter was speaking English for the record and stated that is not what he said. Go on and use the interpreter.

Mr. Price: I did not hear him make that statement.

The Court: The Interpreter has stated that to the Court.

Mr. Price: No. He said to the Interpreter, No, no, and pulled his hand.

Mr. Brancato: No, no.

Mr. Price: Isn't that so, Mr. Tucci?

The Interpreter: He said, "I did not say that." He wanted to make a correction of the word "representation" which he repeated himself afterwards.

By Mr. Price:

Q. What did Andy say to you about representing yourself as the seller?

A. "Be kind enough, you sell the stuff for me, you consider yourself as the real seller, sell the stuff."

Q. Go ahead. What else did he say?

A. Then I will give you a good tip on that, for that."

[fol. 568] Q. Then what did you say to that?

A. I said, "No, my friend, first of all what are you trying to do, put us in trouble?"

Q. What did he say?

A. "No," he said, "in Brooklyn you will never get in trouble." Then I said, "Why, only a minute ago you said you yourself got in trouble and you lost an automobile and you lost the stuff and it cost you several thousands of dollars."

Q. Let me interrupt you at this time to ask you this question. Have you ever sold cocaine before in your life?

A. No, sir.

X Q. Did you ever have cocaine in your possession up to the 13th of January?

A. Yes, I had it when they furnished me with it.

Mr. Brancato: I object to the "up to the 13th of January," and move to strike out the answer as not responsive.

A. Never before that date.

Mr. Price: I consent to it. It was not before that date?

The Witness: Never.

By Mr. Price:

Q. After he spoke to you about dividing the profits, as you have testified, and told you to represent yourself as the seller, what else, if anything, did he say to you?

A. (By the interpreter.) He says that counsel is making a mistake when he says as far as dividing the profits. I did not say that.

Q. What do you say about that?

+ A. He is going to make me a present.

Q. What else, if anything, was said on the 13th of January before Andy went away?

[fol. 569] A. Before Andy went away, I said, "My friend, I will not take any chance of this kind when I can work honestly and make a living."

By the Court:

Q. What day of the week was this?

A. That was on Friday, the 13th of January.

By Mr. Price:

Q. Go ahead and continue that conversation which you were giving when the Court asked you the question.

A. Then, I said, "My friend, you cannot convince me to do anything of the kind because I myself many times read the Italian newspapers that this business is against the law."

Q. Go ahead.

A. He still kept on. He said, "Why, don't think that this stuff over here is the same as that which you are reading in the newspapers; that stuff is no good." He said, "Any way, in Brooklyn, there is no fear about it. You must not be afraid," I said, "Why, you just said a little while ago that you were arrested in the automobile." And he said, "Oh, no, they did not arrest me in Brooklyn, they arrested me outside of Brooklyn."

Q. After that talk, did you have any talk about meeting him on the next day?

A. Yes.

Q. "Yes" will do. Did you answer the question?

A. (By the Interpreter.) He said "Yes," and then he started on a long talk.

Q. Before you had a talk with him about meeting him on the 14th, did you ever have any cocaine in your possession?

Mr. Brancato: He has answered that; he said "No."

[fol. 570] Mr. Price: I said before the 13th, before, and now I am up to the 14th. I progressed a day.

A. Yes. He sad two samples, two small pieces of paper which he told me were samples of cocaine, which I was to return to him on the Saturday, which was the following day, when he brought the buyer there.

By Mr. Price:

Q. When did you get those two pieces of paper which he told you were samples?

A. It was the—he gave them to me on Friday, which I was to show and make the price with the buyer which he was going to bring there on the next day.

Q. Did you have some conversation with Andy about Andy bringing a buyer to 138 Union Street?

A. Yes, he told me—we did, about that. He told me he was going to bring them there on Saturday; that it was a dear friend of his and I was to make the price.

Q. Did he tell you what price you were to make?

A. Yes, sir.

Q. What did he tell you about that?

A. Nineteen dollars.

Q. For what?

A. When the buyer—he did not tell me anything else; when the buyer asks the price, just say "Nineteen dollars." I don't know anything else.

By the Court:

Q. Are you testifying now that Andy asked you to get a higher price from his, Andy's dear friend than that Andy could get from his dear friend?

[fol. 571] A. Yes, sir; because he told me that he was a friend of his and he could not get the same price; that he had to sell it for a lower amount than I could have got for it.

Q. You had seen in the newspapers that this was against the law?

A. Yes, I read at times, I have seen it in newspapers.

Q. Did you think you were breaking the law when you took these samples from Andy?

A. When he told me that that stuff was not the same as that which I had read in the newspapers, then I accepted.

By Mr. Price:

Q. Well now, did he tell you when he would come back with his friend, when he would come back to 138 with his friend.

A. Yes, he told me he would return on the following day, which was on Saturday, about seven P. M.

Q. Now, you testified that before he went away, he gave you two samples?

A. Yes.

Q. Did you see him during the time that he left on the 13th until he came back again at seven o'clock on Saturday night?

A. No, sir.

Q. Did he come to Centorino's house at two o'clock on Saturday afternoon to talk; to Alba's house at two o'clock, Saturday afternoon, to talk to you there?

Mr. Brancato: One moment. I object to the question as calling for a conclusion, as a negative pregnant. Let him state whether this man went there at two o'clock.

The Court: Whom do you mean?

Mr. Brancato: If this witness was there at two o'clock, ask him that.

[fol. 572] Mr. Price: He has testified that he never saw this man Nunzio again until seven on Saturday.

Mr. Brancato: All right. Why ask him about two o'clock?

Mr. Price: Question withdrawn.

By Mr. Price:

Q. Did you go to Alba's house at two o'clock on Saturday afternoon and see Mr. Nunzio and Mr. Pasquale Napolitano there?

A. I went there at the appointed time, which was at seven P. M.

Q. Will you please answer my question? Did you go to Alba's house at two o'clock on Saturday afternoon, yes or no?

A. No, sir.

Q. Did you talk to Pasquale Napolitano and Nunzio Dispenza in Alba's house at two o'clock on Saturday afternoon, the 14th?

A. If I did not go there—

Q. (Interrupting.) Did this man Nunzio say to you and Alba, "I want to introduce to you a friend of mine, Patsy Napolitano?"

Mr. Brancato. When, at what time?

Mr. Price: At two o'clock Saturday afternoon.

A. I was not there.

By Mr. Price:

Q. Then this conversation did not take place in your presence, is that correct?

Mr. Brancato: I think he has answered that; he says he was not there at two o'clock. If he was not there he could not hear any conversation.

The Court: He may answer it.

[fol. 573] A. I did not return there until seven P. M. on Saturday night.

By Mr. Price:

Q. You heard Pasquale Napolitano testify that he went to 138 Union Street at two o'clock on Saturday afternoon and spoke to you and Alba?

Mr. Brancato: I object to that question as not the evidence, if the Court please.

Mr. Price: All right, let us have the record read.

The Court: Objection overruled.

Mr. Price: If there is any question about it——

The Court: That is all right, there is no doubt about it that the man did so testify, that he had a talk with him at two o'clock.

Mr. Brancato: Saturday afternoon at two o'clock with this man?

Mr. Price: If there is any mistake about it, let us have the record read.

The Court: In any event, he may specify if he was there.

Gentlemen, if the Jury wants the record read later on it may have it.

By the Court:

Q. Were you there at two o'clock on Saturday afternoon, January 14th?

A. No, sir.

Q. Did you arrive there before seven o'clock in the evening on that day?

A. It might have been a quarter to seven or ten minutes to seven.

Q. You did not get there before six o'clock in the evening?

A. No, sir.

[fol. 574] By Mr. Price:

Q. Well, up to the time that you got there on Saturday night, in the neighborhood of seven o'clock, had you even seen Pasquale Napolitano?

A. No, sir.

Q. When you got to Alba's house on Saturday night, what time did you get there?

A. It was around seven o'clock, probably ten or fifteen minutes before or after. I don't know exactly.

Q. When you got there, who was in the house?

A. My Godfather, Alba, and his wife.

Q. Who else?

A. No one else.

Q. While you were there with your Godfather Alba, and his wife, did anybody else come in?

A. Yes, sir; after I had remained about ten to fifteen minutes, then Andy came along with this man here (pointing to Napolitano) whose name I had learned since that time and Andy introduced Napolitano as a friend who was going to buy.

Q. Up to the time that he introduced—Andy—his friend who was going to buy, did you have any packages of cocaine or heroin

in your possession other than the two samples which you testified that Andy gave you?

A. No, sir; all I had was the two samples because he had told me—

Mr. Brancato: I object to that, as to what he had told him. The question is, if he had anything but the two samples.

The Court: He may state the conversation.

By Mr. Price:

Q. Continue.

A. (Continuing:) He told me that he was going to furnish me with the packages.

[fol. 575] Q. When Pasquale came there with Andy and was introduced as his friend who was going to buy, will you please state to the Court and jury everything that took place?

A. As they got into the room he introduced Napolitano to me and he said, "This is the man that is going to buy." I said, "I am pleased to meet you."

Q. Who said that?

A. Andy.

Q. Said that Napolitano was the man who was going to buy?

A. Yes, sir.

Q. Go ahead and state everything that took place?

A. Yes, sir. Then Napolitano asked me, "Are you the man who has the stuff?" I said, "Yes." He said, "Have you got it ready?" I said, "No." I answered "No." "I don't think I can give you the stuff before Monday evening."

Q. Go ahead and tell us everything that happened?

A. And then Andy answered and he said, "Well, if such is the case, why don't you show him the samples, anyway."

Q. Before these samples were shown, did you have a conversation there as to the price that you were going to charge him?

A. He was looking at my samples; he took another sample out of his pocket, which was much larger.

Q. Who did?

A. Napolitano. And he opened it. He was just putting his fingers in. It was like salt, rubbing the fingers on it, pinching it like, and he asked me, "How much was the price?" I said, "Nineteen dollars."

Q. Nineteen dollars what?

A. I don't know how much I was to give him or how I was to sell it.

Q. Go ahead.

A. Then Andy said, "Don't look at that stuff. This stuff over here is much better than the one that you have."

[fol. 576] Q. Whom did he say that to?

A. Andy told him, (Witness points at Napolitano). Then Napolitano said, "Could you do me a favor now and see if you can furnish me with about ten ounces?" When he said "ten ounces" I said, "What does he mean?" I wonder what he means, ten ounces, because he asked me for the stuff.

By Mr. Brancato:

Q. Is that what this man said, "I wonder what he means?" out loud or did he think it?

A. He said to me, he asked me, "Can you give me ten ounces now?" Then I said—I started to think about how do they sell this by the ounces?

Mr. Brancato: I move to strike out what he thought. Tell us what he said. Thoughts are not of any account.

Mr. Price: I submit that is quite improper.

Mr. Brancato: I said thoughts were of no account.

Mr. Price: His statement was that the defendant's thoughts are of no account.

Mr. Brancato: Yes, I think that is fair.

The Court: They are not admissible. He can only state to the jury what he said.

Mr. Price: I realize that but Mr. Brancato should not pass remarks all through this trial; he has done it entirely too frequently.

By Mr. Price:

Q. Go ahead. Proceed.

A. (Continuing:) Then I again asked him, "How much do you want of it?" He said, ten ounces. I said, "Well I don't care how much you want of it, I cannot get it before Monday night. I have none here."

[fol. 577] Q. Had you had any talk before that with Andy as to how much you should sell to his friend, his dear friend?

A. No, Andy told me, he said, "You ask for nineteen dollars," but he did not tell me whether they were ounces or what they were.

Q. Go ahead and tell us what else happened there, on Saturday night?

A. Then I repeated that I could not get it for him until Monday evening, and Andy approached me and said, "Come in here." We went into the next room, and he said, "Where do you live?" I said, "172 Columbia Street." He said, "All right. I will do the best I can to try to get that stuff over there on Monday morning."

Q. Then did you have a conversation with the other witness, Napolitano and Andy about coming back on Monday night?

A. Yes, as we came out of the other room he said, "Well, what about it?" I said, "I could not get it for you, to let it go until Monday evening."

Q. Was there any appointed hour stated when they were to come back on Monday evening?

A. Yes, about seven P. M.

Q. Now, up to the time that Andy Dispenza left you at 138 Union Street on Saturday, did you have any cocaine in your possession other than the two samples which Andy had given you?

A. I had nothing at all, for I had already turned in them two samples to them.

Q. When did you turn the two samples over to them—whom do you mean that you turned them over to?

A. That man who says his name is Napolitano.

Q. Now, did you ever have any cocaine in your possession other [fol. 578] than those two samples before Saturday night, January 14th?

A. That is all.

(While the Interpreter and Witness were talking the word "heroin" was used.)

By Mr. Price:

Q. I did not ask about heroin, Mr. Interpreter, but cocaine?

A. No, sir.

+ Q. Had you ever sold any cocaine before Saturday night, January 14th, 1922?

A. How could I sell it if I did not know what the stuff was.

Q. Did you ever know where you could obtain it before Saturday night, January 14th, 1922?

A. No, sir, I told him that I did not know anybody or I did not know where to get it.

Q. The next day was Sunday, the 15th, is that correct?

A. Yes, sir.

Q. And the following day was Monday the 16th; is that right?

A. Yes, sir.

Q. Well, now, coming down to the 16th of January, 1922, when did you next see Andy?

A. It was on Monday morning, about a quarter after eleven or before noontime.

Q. Where did you see him?

A. He was coming along Columbia from Degraw like.

Q. Where were you when you saw him?

A. In front of the door.

Q. In front of what door?

A. At the entrance of my home.

X Q. 172 Columbia Street?

A. Yes, sir.

Q. Did you see your wife there at that time?

A. Yes, at that time my wife came along because she had gone to the store to buy something to eat for us.

[fol. 579] Q. Will you please tell us everything that happened there on that morning of the 16th in front of your door at 172 Columbia Street, when you met Andy?

A. As I was standing in front of my door talking to my wife, who had just come from the store, this Andy came along and he said, "Can I talk to you for a minute?" And then he went a little distance away from my wife, about five or six feet and I was close to the wall—

Q. Go ahead.

A. He said, "Is this your wife?" I said, "Yes." He said, "I brought the stuff here." I said, "Where is it, in the newspaper?"

He said, "No, I have it here, wrapped up in a newspaper." They were in small packages, then put in a newspaper, and he said, "Don't say anything to your wife of what is in here." He said, "Keep them well covered," and he said, "Now, be careful with this stuff over here; to be sure that you will cause no shadow to be through the room as the police might see you.

By the Court:

Q. Did you still think that there was nothing wrong in the transaction after that statement by Andy?

A. Yes, because he had told me that that was not the same stuff.

Mr. Brancato: I object to the "because," if the Court please. The answer to your Honor's question is "Yes."

The Court: He can give any explanation that he wants to.

Mr. Price: He has answered.

[fol. 580] The Court: Make any explanation that you want to.

A. It was not the same stuff as that which I had read in the newspaper. This was good stuff.

The Court: Too good for the police to get; is that right?

The Witness: I did not know.

Mr. Price: I submit that is improper.

The Court: Very well. Objection sustained.

Question withdrawn. Strike out the answer. Continue.

A. At that time he gave me the package and I took it. He said, "Good-bye, I will see you tonight."

By Mr. Price:

Q. What did you do with the package?

A. I brought it upstairs.

Q. Where did you put it?

A. I put it in one of my children's bed rooms, there was a closet there; put it in there.

Q. Did you leave it there and then go out?

Mr. Brancato: I object to that, if the Court please, let him tell.

The Court: Yes.

By Mr. Price:

Q. After you put the package in the closet, what did you do?

Mr. Brancato: I object.

Mr. Price: What difference does it make?

[fol. 581] Mr. Brancato: Oh, you know what difference it makes.

A. Oh, I left it there, that's all.

Q. What did you do after you left the package in the closet?

A. My wife cooked dinner and we ate.

Q. What did you do after you had something to eat?

A. While we were talking downstairs my wife's boss came along—

Mr. Brancato (Interrupting): I object to that, if the Court please. That is not an answer. It is entirely irresponsible.

Mr. Price: All right. I will consent that it be stricken out.

The Court: All right.

By Mr. Price:

Q. After you had something to eat, what did you do?

A. I went out. My wife remained in.

Q. When you went out, did you leave the package where you had left it in the closet?

A. Yes, sir.

Q. Now, I neglected to ask you while you were down on the sidewalk and your wife was there, did you see anybody else you knew other than Andy?

A. Yes, sir.

Q. Whom else did you see that you knew?

A. First I saw my boss—not my boss.

The Interpreter: He corrects himself.

By Mr. Price:

Q. He said his wife's boss?

Mr. Brancato: I think the interpreter knows his business better than counsel.

[fol. 582] Mr. Price: You have corrected him.

Mr. Brancato: I understand it.

The Interpreter: He has corrected himself. He said, "My wife's boss."

By Mr. Price:

Q. Go ahead.

A. He asked her why she did not go to work that morning.

Mr. Brancato: I object to that conversation.

Mr. Price: I consent that it be stricken out.

By Mr. Price:

Q. I did not ask you that. I asked you to give me the names of the people that you saw there, that is all that I want.

A. While I was talking to Andy I saw the barber come along with a friend of his. They have been here already.

Q. Did you see any one else other than your wife's boss, the barber and his friend there?

A. Yes, sir.

Q. That you knew that morning?

A. Oh, yes. They are next door or two doors away on the side-

walk; there was people there, but I do not recall the names of all who were there.

Q. Did you see some of them here who testified?

A. Yes, the barber, the one that accompanied him over here or there; the one that was with him.

Q. I mean other than those two you saw some other people that testified here?

A. My wife's boss.

Q. All right. Getting down to the night of the 16th, did you take [fol. 583] thi package from your home at 172 Columbia Street on the night of the 16th of January, 1922?

Mr. Brancato: I object to the question on the ground that it is leading. I think he should tell us what he did that night.

Mr. Price: I am going to follow it up.

The Court: He can answer that question.

A. On the Monday evening?

By Mr. Price:

Q. That is what I am talking about, the night of the 16th?

A. Yes, sir.

Q. What time did you take it away from your house?

A. I don't remember the exact time. It was about eight or a quarter to eight or ten after eight.

Q. Before you took the package away from your house did anybody come to your house?

A. Yes, my godfather, Stephano.

Q. Alba, is that right?

A. Yes, sir; Alba.

Q. After Alba came to the house, did Alba go away?

A. We went out together without the stuff.

Q. Where did you go and where did Alba go?

A. We went to the corner of Degraw Street. There is a drug store there.

Q. Go ahead and tell us everything that happened there?

A. I was going to telephone Gravesend Avenue——

Mr. Brancato: I object to that and move that the answer be stricken out.

Mr. Price: I consent.

The Court: Objection sustained. Strike it out.

[fol. 584] By Mr. Price:

Q. Did Alba go to the drug store with you?

A. I don't remember whether he went inside or remained outside of the drug store.

Q. When you came out of the drug store, did you see Alba outside?

Mr. Brancato: I object to that. He has testified that he did not know whether he was inside or outside.

Mr. Price: No, he said when he went in the store he did not know whether Alba came in or stayed out.

Mr. Brancato: Ask him where?

By the Court:

Q. When he came out, did he see Alba?

Mr. Price: That is what I am asking.

The Court: All right.

A. Yes, sir.

By Mr. Price:

Q. Where was he?

A. In the front of the door.

Q. In front of the drug store door, you mean or some other door?

A. Yes, right near the door of the drug store.

Q. From there on tell me what you did next and what Alba did next?

A. When we went out, we went to my godfather's house, Stephen Alba.

Q. Did you have the package with you at that time?

A. No, sir.

Q. When you went to your godfather's house, did you go with your godfather?

A. Yes, together.

[fol. 585] Q. And when you got there, did you see anybody there?

A. There was Mrs. Alba, Andy and that man there that was to buy.

By Mr. Brancato:

Q. Which man do you mean, Napolitano?

A. Yes, sir.

Mr. Brancato: Stand up.

(Napolitano stands up.)

A. Yes, sir.

By Mr. Price:

Q. Tell us everything that happened at Number 138 Union Street when you got there with Alba and saw these two men and Alba's wife there?

A. As we entered the room, Napolitano asked me is the stuff ready.

Q. Let me interrupt you.

A. I said "Yes."

Q. Where was this conversation, in what room, the kitchen or the other room?

A. In the kitchen.

Q. Go ahead.

A. I said, "Yes, the stuff is ready. We will go out and get it."

Q. Was there any conversation at that time about money?

A. No, sir.

Q. When you said that "We will go out and get it," what next happened and what was said?

A. Yes, then they got up and the four of us walked out; that is, I, Alba, Andy and this man over here, Napolitano. We walked about ten or fifteen paces away from the house and then Napolitano stopped. We saw him stop. We all stopped, and I said, "What happened?" He said, "I am afraid to go in anybody's house. I have a roll of bills." He pulled a roll of bills out of his pocket, and [fol. 586] showed us. "I do not want to go into anybody's place; I am afraid." I said, "You do not have to be afraid. You are going to my house just the same as my godfather's house." He said, "No, if you want to bring the stuff here, all right; if not, I do not want it." So then we, the four of us, we returned again into my godfather's house.

Q. Did Nunzio speak to you alone when you got back into your godfather's house?

A. First this man approached me, he spoke to me, he said, "Well, if you will bring the stuff here, it is all right, if not I do not want it." I did not know what to do. I remained there like a dummy. Andy winked his eye at me. He said, "That is all right. We will go and get it. We will bring it over here."

Mr. Brancato: Did he say "We will go ahead and get it"?

Mr. Price: No, I submit the answer be read.

(The last answer was repeated by the reporter.)

Mr. Brancato: Is that what he said?

Mr. Price (to the interpreter): Don't ask that question. I am asking questions.

The Court: Yes, ask him on cross examination.

Mr. Brancato: Are you afraid it might come out?

Mr. Price: I submit that is improper.

The Court: Go right along, Mr. Price.

By Mr. Price:

Q. Is that what Andy said to you at that time?

A. And he repeated it again, "Go ahead and get it and bring it over here."

[fol. 587] Q. What did you do?

A. I went over and got the stuff.

Q. When you went over and got the stuff where did you go?

A. To my home.

Q. 172 Columbia Street?

A. Yes, sir.

Q. Did you get this package which was wrapped in a newspaper, as you have told us?

A. Yes, it was at the same place where I left it.

Q. What did you do after you got the package; where did you go?

A. I got the package and as I started to go downstairs I stopped for a moment and started to think——

Q. No, I do not want your thoughts, please don't——

Mr. Brancato: I would like to have them in this case.

Mr. Price: Well, you are not going to get them.

By Mr. Price:

Q. When you went downstairs——

Mr. Price: Just a minute ago you said they were immaterial.

Mr. Brancato: Yes, they are very fine now, we are going to get them on record.

Mr. Price: Not if I know it.

By Mr. Price:

Q. When you started downstairs from 172 Columbia Street, what other house did you go to next?

A. At Agnello's grocery store.

Q. Where is that?

A. At 167 Columbia Street.

Q. Now, up to the time that you took this package and went to 167 Columbia Street, had you ever spoken a word to Frank Agnello, Tom Agnello or the defendant Pace about what was in the package, or about any proposition to sell cocaine?

[fol. 588] A. No, sir; I did not even see them.

Q. Now, when you got to 167 Columbia Street, Agnello's store, did you see the defendant, Frank Agnello, in the store?

A. Yes, he was there in the grocery store fixing up some macaroni, wrapping it up.

Q. At that time you had with you this package, which you say Andy had given you?

A. Yes, sir.

Q. Did you speak to Frank Agnello?

A. Yes, sir.

Q. Now, at the time that you spoke to Frank Agnello, was the defendant, Thomas Agnello, present?

A. No, sir; he was not.

Q. Was the defendant, Pace, present at that time?

A. No, sir he was not.

Q. Now, what did you say to Frank Agnello, and what did Frank Agnello say to you at that time?

A. I entered the door and I said, "Frank, would you be kind enough to bring this package as far as Union Street?"

Q. Did you tell him where he was to take it on Union Street?

A. Yes, sir.

Q. What did you tell him?

A. I told him to wait for me across the street from 138 Union Street.

Q. And after you told him that what did you do; what else was done, if anything?

A. He went out the door; as he went out the door, I kept my eyes on him all the time until he turned into Degraw Street.

Q. Before he went out the door you had the package in a newspaper, didn't you?

A. Yes, sir.

Q. Was anything done with the package before Frank went out?

A. Yes, sir.

[fol. 589] Q. What did you do with the package in the meantime?

A. While Frank had gone inside to get his coat as I told him to get his coat, I opened the package and I saw that there were ten blue packages in that one package.

Q. When Frank went in to get his coat, do you mean a jacket like I have on or his overcoat?

A. His overcoat.

Q. When Frank came out with his overcoat on, what did you do with those blue packages?

A. I said, "Frank, instead of bringing them this way in this package, put them in your pocket," and I myself assisted him in putting those packages into the various pockets of his overcoat.

Q. Pockets of his what?

A. Coat and the pants.

Q. That is, indicating his jacket, which would be under his overcoat and his trousers pocket?

A. No, he put them in his coat, sack coat, not in the overcoat.

Q. You helped him to put them in?

A. Yes, sir; I did.

Q. Did you tell him what was in the packages?

A. No, sir.

Q. Did you tell him that you were selling cocaine?

A. No, sir.

Q. Did you have any conversation about the contents of the packages with Frank Agnello?

A. No, sir.

The Court: Now, we will take a recess of the trial until half past two.

Mr. Brancato: I want to move at this time that this witness be remanded in the custody of the marshal to the end of the trial until he finishes his testimony.

[fol. 590] Mr. Price: No, I will produce him.

Mr. Brancato: Until he finishes his testimony.

Mr. Price: No, I will produce him.

Mr. Brancato: I ask that he put into the custody of the marshal.

Mr. Price: What is sauce for the goose is sauce for the gander. Every one of his witnesses were permitted to go and my witnesses should be accorded the same kind of treatment, the same courtesy that his witnesses are.

Mr. Brancato: This man is a defendant. The Court has certainly

power to do it, and would not have power to commit a witness, a man who has testified.

The Court: Motion denied.

At this point a recess was taken to 2.30 o'clock P. M.

After Recess

2.30 o'clock p. m.

ANTOMINO CENTORINO resumes the stand for further examination.

Direct examination by Mr. Price (continued):

Q. Did you tell Frank Agnello when you put the packages in his pocket what they contained?

A. No, sir; I did not.

Q. After you put the packages in Frank's pockets and told him where to go with the packages, did Frank go out of the store?

A. Yes, sir.

[fol. 591] Q. When he went out of the store, what did you do?

A. I went out right after him.

Q. Did you go out of the store with Frank or after Frank?

A. First he went out; then I went out.

Q. And at the time that he went out and you went out after he did, did anybody else at that moment, come out of the store? Yes or no?

A. No, there was only Mrs. Agnello in there and another lady who was buying stuff in the store and two young men.

Q. When Frankie went out and you went out after him, did you see where *where* he went?

Mr. Brancato: Yes or no.

A. Yes, sir.

By Mr. Price:

Q. Where did he go?

A. He turned in Degraw Street.

Q. He walked through Columbia to Degraw Street?

A. Yes, sir.

Q. Did you lose sight of him when he turned into Degraw Street?

A. He turned into Degraw Street.

Q. I say after he turned into Degraw Street could you see him in Degraw Street or did you lose sight of him?

A. No, sir; I could not see him.

Q. After you walked out after Frankie, did you stand in front of the store or did you continue to walk away?

Mr. Brancato: If the Court please, I object to this line of questions as leading; let him state.

[fol. 592] Mr. Price: There is nothing leading about that, Judge.
The Court: Just ask him what he did. He might have done something.

Mr. Price: He can state it.

The Court: Ask him what he did.

By Mr. Price:

Q. When you walked out of the store after Frank, what did you do?

A. I remained in the front of the store watching him.

Q. While you were standing there watching him did you see anybody else?

A. Well, while I was standing there in front of the door and Frank had turned into Degraw Street out came Tom Agnello and Pace.

Q. When you say that they came out; did they come out where you were standing?

A. As I had my shoulders towards the store and the door opened there, they were coming out of the store.

Q. When you say "they" you mean Thomas Agnello and Pace, as you have just told us?

A. Yes, sir.

Q. Well, now, when they came out, did you speak to them or did they speak to you?

A. I spoke to them.

Q. Now, up to the time that you spoke to them, had you ever seen Thomas Agnello and spoken to him with reference to selling cocaine or narcotics of any kind?

A. Never.

Q. Had you ever seen or spoken to Pace about narcotics or the sale of cocaine?

A. No, sir.

Q. Did you at that time tell Pace and Agnello or either of them that you were going up to 138 Union Street to sell cocaine or heroin?

A. No, sir.

[fol. 593] Q. You testified that when they came out, Pace and Thomas Agnello, you had a conversation there; will you please state that conversation?

Mr. Brancato: I object to that as incompetent, irrelevant and immaterial, what conversation he had with any of the defendants.

Mr. Price: We are charged with conspiracy.

The Court: I know, but of course he can ask whether he talked about this drug matter when he asks what conversation he had. But suppose that they revile government witnesses to each other; suppose that the conversation consisted of reviling Government witnesses—

Mr. Price: It is not that. I will tell you what it is.

(Counsel explains to Court in private.)

The Court: Objection overruled.

(The last question was read to the witness by the reporter.)

A. I asked them where they were going.

Q. Who spoke to you, Pace or Agnello?

A. Agnello.

Q. What did he reply?

Mr. Brancato: I object to that question, if the Court please, the ground that it is incompetent, irrelevant and immaterial.

The Court: He may state. Objection overruled.

A. He said they were going as far as the club at Union Street.

[fol. 594] By Mr. Price:

Q. Did he mention the name of the club?

A. No, sir, he did not.

Q. Did he tell you Union and what other street?

Mr. Brancato: I object to it as leading, if the Court please. him tell us himself.

Mr. Price: There is nothing leading about that. There might be million clubs.

The Court: What more, if anything, did he say about the location of the club?

By Mr. Price:

Q. Did he say anything other than you have testified here about the location of the club?

A. No, sir.

Q. What did you say when he said he was going up Union Street to the club?

A. I said, "I am also going toward Union Street, come on and will go together."

Q. Then did you, Pace and Thomas Agnello walk through Columbia Street to Union Street?

A. Yes, sir.

Q. Where did you go to?

A. We went along Degraw Street—

The Witness: No.

The Interpreter: No, Union Street.

By Mr. Price:

Q. To where?

A. To near 138 Union Street.

Q. When you and Thomas Agnello and Pace got to near 138 Union Street, did you continue to walk, or did you stop?

A. We stopped—

[fol. 595] Q. That is an answer. Won't you please just answer my questions until I ask the next one. Now, when you stopped, you mean Thomas Agnello and you and Pace, is that right?

A. Yes, the three of us.

Q. Where did you stop?

A. At the front of the door of 138 Union Street.

Q. Now, did Frank Agnello walk with you?

Mr. Brancato: I object now, if the Court please, to him leading. Let him tell what, if anything, anybody else did.

Mr. Price: He has already testified, Judge, that Frank Agnello walked out of the store alone, to Degraw Street, and through Degraw Street, where he lost sight of him.

The Court: Yes. Ask him when he next saw Frank Agnello.

Mr. Price: I am entitled to a categorical answer; to a categorical denial of the testimony of the Government witnesses, am I not?

The Court: Yes, sir; very well.

Mr. Price: That is all I am doing.

Mr. Brancato: There is no testimony of the Government witnesses, if the Court please, that Thomas Agnello went to Degraw Street or any place else than Union Street with them.

The Court: Put that question to them.

Mr. Price: I will adopt your Honor's suggestion.

By Mr. Price:

Q. When you stopped in front of 138 Union Street with Pace [fol. 596] and Thomas Agnello, did you see Frankie Agnello?

A. Yes, sir; across the street.

Q. When you say "across the street" do you mean on the opposite side of the street from 138 Union Street?

A. Yes, across the way from where we were standing.

Q. Is it the fact that Frank Agnello walked from the store, 167 Columbia Street, with Thomas Agnello, Pace and you, to Union Street, up to 138 Union Street?

A. No, Frank was not with us.

Q. When you stopped in front of 138 Union Street with Thomas Agnello and Pace, did you have a conversation with Thomas Agnello and Pace right there at that time?

A. Yes, sir.

Q. What was that conversation, please?

Mr. Brancato: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Thomas saw his brother on the other side of the street—

Mr. Brancato: I object to that, if the Court please.

The Court: Strike it out. Tell us what was said, please.

A. He said, "What is my brother doing over here across the way?"

By Mr. Price:

Q. Go ahead?

A. I said, "Nothing, he is doing nothing here. I sent him with some articles to bring over here at 138 Union Street."

Q. Go ahead; anything else?

A. So I then called him and he came over.
[fol. 597] Q. You called who and who came over?

A. Frank Agnello.

Q. When Frank came over, did you have a conversation with Tommy, a further conversation with Tommy Agnello?

A. Yes, sir.

Q. What was that conversation please?

A. After I had explained to him that I had sent him over there with some articles which he was to bring there then they were about to walk away and I said, "Come along with me and accept some pastry or something in the place here."

Q. Now, in what place did you ask them to accept pastry?

A. At 138.

Q. That is, in Alba's house?

A. Yes, sir.

Q. Whom did you say that to?

A. To Thomas and Pace.

Q. To Pace, is that right?

A. Yes, sir.

Q. After you said that, what did Thomas say to you?

A. First they refused. They said, "No, we will have it some other time," but I insisted upon it and they came in.

Q. They came in with you and with Frankie Agnello?

A. Yes, sir.

Q. Will you please tell the jury from here, as briefly as you can, everything that happened in that 138 Union Street after you went in with Frank Agnello, Thomas Agnello and Pace?

A. We walked in, I walked in first, then they followed me right behind. When they all got in, I said, "Comparo, or Godfather, be kind enough to see what these gentlemen will have on me."

Q. When you said that, was Thomas Agnello and Pace there?

A. Yes, sir; they were with me.

Q. All right. Proceed.

[fol. 598] A. He said, "Certainly, why not? Then he went inside to light the gas.

Q. When you say "he went inside" where were all you men at the time he said this? What room, show me on the photograph.

A. (Indicating with his finger.) We were in room marked "A" and my Comparo or Godfather walked into room "B."

The Interpreter: Pointing with his finger at the last window over here.

By Mr. Price:

Q. When your Comparo, Stephen Alba walked from the room "A" into the room "B," what did you do—What did he do?

A. He lit the gas and then he called us in.

Q. When he lit the gas, and called you in, who went into the room "B"?

A. I, Thomas Agnello, Pace and Frank Agnello.

Q. When you got into the room "B," what was there if anything?

A. As soon as we got in there, there was a box of pastry over there which is made of—

Q. Never mind what it is made of?

A. Some kind of a pastry which they call "tirrone" in Italian.

Mr. Brancata: Peanut brittle.

The Interpreter: But it is not exactly like peanut brittle, a lot of seeds.

By Mr. Price:

Q. All right; what happened when you got into this room where the pastry was?

A. We did not even have a chance for all of us to get into the [fol. 599] room where I was leading; the other three were behind me, suddenly we saw somebody fire a shot through the window.

Q. At the time the shot was fired through the window, where was Mr. Andy and Mr. Napolitano?

A. They were seated in the kitchen.

Q. When the shot was fired, where was the shot fired?

A. Through the pane of glass at the bottom window.

Q. I show you this photograph, Defendant's Exhibit B and ask you is that the glass that the shot was fired through?

Mr. Brancato: I object to that as a conclusion. This man did not see the bullet go through the window, I am sure, unless Mr. Price will make him say that. He can say having heard a shot, what happened after that. Don't show him the window and ask him if that is the place the shot was fired through.

By the Court:

Q. How long before the shot did you see this window open?

The Interpreter: To the witness. I cannot make it any clearer to you.

The Court: You are both talking together.

The Interpreter: He don't seem to understand.

A. I saw it many times before.

Mr. Price: The question that the judge asked you is, how long before the shot was fired did you see the window.

[fol. 600] By the Court:

Q. As you came into the house that night, did you see the window?

A. Yes, sir.

Q. Was any pane of glass in the window broken then?

A. This one here. (Indicating the right hand window) where it shows a slight—

Q. Was that the only break in the glass at the time that you entered the house?

A. That is all.

Q. Now, how long after the shot was fired did you see the window again?

A. Immediately after, almost, when we were placed under arrest, for I heard the noise of the glass when it fell.

Q. Directly when you saw the window at the time that you have just described, was the glass in the same condition as when you went into the house or in some other condition?

A. No, sir.

Q. What is the difference?

A. Because it shows that the hole wasn't there; also that crack which appears on that paper, it was not there.

Q. Those were both there after you heard the shot?

A. Yes, sir; when I saw the hole, I saw that.

The Court: Now, go along, Mr. Price.

By Mr. Price:

Q. I show you this paper, Defendant's Exhibit A and specifically call your attention to the mark on the upper right hand window.

A. Yes, sir.

Q. Was that window broken after the shot was fired?

A. No, that was not.

[fol. 601] Q. Was it in the same condition as it shows on the photograph immediately after the shot was fired?

A. Yes, sir; it was whole.

Q. Now, you have testified that when Alba went in and lit the light and you followed on, the three defendants, Pace and the two Agnello boys were coming in, didn't you, and a shot was fired?

A. I saw the shadow of one of the — when the shot was fired.

Q. Then you testified that at that time Mr. Nunzio and Mr. Pasquale Napolitano was in the kitchen; please go on from there and tell us in your own way everything else that took place right up to the time that you were taken away from 138 Union Street?

A. Yes, sir, we were seated there, it did not elapse one or two seconds, immediately after the shot was fired, that through the door which we had come through, six or seven detectives rushed in there.

Q. Go ahead.

A. And they ordered us to put our hands up and our shoulders against the wall.

Q. Go ahead?

A. And they searched every one of us and they gave us some pretty good punches here and there and they searched us again. After they had searched us a second time, Detective Manning walked into the other room, the kitchen. Then a second or two after that he returned, and he went directly to my Comparo, my godfather, Stephano Alba. He ordered him to ut his hands up again —

Q. Let me interrupt you. When Manning went back into the kitchen, room A, as you testified, who was in the kitchen?

A. Mrs. Alba, this Andy and that Napolitano.

[fol. 602] Q. Well now, when Manning came back to where Alba was, and had you all put up your hands and searched you again, tell us what happened?

A. He again put his hands into the coat pocket and he pulled out a roll and he said, "This is your money, and the other hand he put it in his pants pocket and he pulled out some more money from there.

Q. Whose pocket did he put his hand in when he said, "This is your roll?"

A. My comparo, Alba.

Q. What was on the table in the room "B," if anything, when the officers came in?

A. That box of pastry which I had left there.

Q. What else?

A. That is all.

Q. Were any of the blue packages on the table?

A. No, sir.

Q. Where were they?

A. They were still—on Frank's person.

Q. Had Stephano Alba given—received a roll of money, which was offered in evidence from the witness Pasquale Napolitano, up to that time (referring to Exhibit 10)?

A. No, sir.

Q. Did Pasquale Napolitano give to Alba any money there that night?

A. No, sir.

Q. Was any conversation there up to the time that the shot was fired and the door broken into about the sale of cocaine?

A. No, we did not talk about that yet.

Q. Did the defendant Thomas Agnello say one word about cocaine or anything else from the time that you went in there up to the time that he was placed under arrest?

A. No, sir; he did not.

Q. Did you say a word to Thomas Agnello from the time that you [fol. 603] went in the room "B" about the sale of cocaine or anything else?

A. No, sir.

Q. Did you ever say one word to Thomas Agnello that you were going to 138 Union Street for the purpose of selling cocaine or any other narcotic?

A. No, sir, I did not.

Q. Did the defendant Frank Agnello place his hand in his pocket and take out three or four packages and pass them to the defendant Thomas Agnello, and did he lay them on the table?

A. No, sir.

Q. Did you say to the defendant Pace, pointing to Patsy and Nunzio, the man that you know as Andy, that these are the men that want to buy cocaine, or anything to that effect?

A. No, sir.

Q. Did any such conversation take place?

A. No, sir.

Q. From the time that Pace got in there right up to the time that he was taken away by the officers in the patrol wagon, did he say one word about cocaine?

A. No, sir; no word was said.

Q. Did Officer Manning take the defendant Frank Agnello with Mr. Oyler into another room, and talk to him or were all the defendants kept together all the time?

A. We were all together in one room.

Q. Was Thomas Agnello taken out of the room by Mr. Oyler and Mr. Manning while you were there or was he kept in the same room?

A. There was nobody taken away; we all remained in.

Q. Did Thomas Agnello say, "Can't we fix this up so we can spring myself and brother and Pace for two thousand dollars," or words to that effect?

A. No, sir.

[fol. 604] Q. Did Thomas Agnello say that "We get the stuff off the ships," or anything like that?

A. If he did not know anything about it, how could he?

Mr. Brancato: I move to strike that answer out.

Mr. Price: That is an answer.

The Court: You mean that he said he did not know anything about it?

Mr. Price: He said if he did not know anything about it.

The Court: Motion granted to strike out

(The last question was repeated by the reporter.)

Mr. Brancato: Yes or no

A. No, sir.

By Mr. Price:

Q. Now, when the officers came in there, did they say to the boy, "Where did you get this stuff?" Or did the boy Frank Agnello say "Somebody gave me five dollars for bringing it here?"

A. When the boy was asked, "Where did you get this stuff?" The only answer he made was that a man gave it to him.

Q. He made that answer to Officer Manning, did he, after Manning gave him a smash in the jaw with his clenched fist?

Mr. Brancato: I object to that, if the Court please. I will bring something else out if he gets that out.

The Court: Objection sustained.

Mr. Price: I except.

[fol. 605] By Mr. Price:

Q. Who did the boy make that answer to?

A. One of the detectives.

Q. Do you know which one?

A. That tall man. (Indicating.)

Q. To Officer Manning?

A. Yes, sir, that tall man there.

Q. That is the man that you have indicated?

A. Yes, sir.

Q. Did Manning do anything to the boy before the boy said that to him?

Mr. Brancato: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. At the beginning he did not, but after he saw the stuff he punched him.

Q. Was this answer that the boy made, was that before he got punched or after he got punched?

A. First he answered the question to him and then he punched him.

Q. Well now, up to and including January 16th, 1922, had you ever in you life spoken a word to Thomas Agnello about selling cocaine?

A. No, sir.

Q. Had you ever spoken a word to Pace?

A. No, sir, neither.

Q. About selling cocaine or narcotics?

A. Never.

Q. Had you ever spoken a word to Frank Agnello about selling cocaine up to the time of your arrest?

A. No, sir.

Q. Did you ever advise Pace, Thomas Agnello or Frank Agnello by word or any other way that you were going to 138 Union Street to sell narcotics?

A. No, sir; I did not.

[fol. 606] Q. Have you ever been previously convicted of a crime?

A. Never.

Q. Now, when the officers came in and ordered everybody to put up their hands, what did they do to Nunzio, if anything?

A. I did not see him because he remained in the kitchen.

Mr. Price: That is all.

Juror Number Twelve: Would it be proper for me to ask a question?

The Court: Yes.

By Juror Number Twelve:

Q. When you testified as to his giving the packages to him on Columbia Street did he mean to say that he gave him the packages and then wrapped them up in a newspaper or the package was already wrapped in a newspaper?

A. No, they were all packed in that newspaper.

Q. What was the color of the paper on the window? Colored paper or plain white paper?

Mr. Price: On what window do you mean?

Mr. Brancato: I think the juror is intelligent enough to ask his own question without the assistance of counsel.

Mr. Price: So do I.

The Court: It is just a question of the meaning. Mr. Jurymen Number Twelve, is your question, "What was the color of the paper on the two windows "A" and "B" at 138 Union Street?

The Juror: Yes.

A. I cannot tell you the exact name of that but I know it was in little squares, colors blue, different kinds.

Mr. Price: That is all.

[fol. 607] Cross-examination by Mr. Brancato:

Q. Now, Mr. Centorino, you have talked this case over with your fellow defendants since the time of the arrest, have you not? A. Not always, we did.

Q. You have talked the case over recently with your fellow defendants, haven't you? A. Yes, we did.

Q. You have talked over with them the chance of being convicted or acquitted, too?

Mr. Price: I object to that on the ground that it is argumentative and there is not any question.

The Court: Objection overruled.

Mr. Price: Exception.

A. No, sir.

By Mr. Brancato:

Q. Do you mean to say that you have not talked over the chances of conviction or acquittal with your fellow defendants and friends?

Mr. Kesselman: Objected to on the ground that it has already been answered.

The Court: Objection overruled.

Mr. Kesselman: Exception.

A. That is according to the case.

By Mr. Brancato:

Q. Didn't you agree that you would be the goat and take the blame for the five?

Mr. Kesselman: I object to the form of the question.

The Court: I think that you should eliminate the word "goat".

[fol. 608] By Mr. Brancato:

Q. Didn't you agree to be the hero and take the blame?

Mr. Kesselman: I object to the form of the question.

The Court: Yes, we should eliminate any reference to his being

Mr. Brancato: Strike out the hero part.

By Mr. Brancato:

Q. Didn't you agree to take the blame for the others so as to save the others? A. No, sir.

Q. Isn't that the reason that you come here today and admit to practically everything the agents have said?

Mr. Price: I object to that on the ground that the question is improper.

Mr. Kesselman: I object to that.

The Court: Objection sustained.

By Mr. Brancato:

Q. What is your business? A. At the present time a clothing presser.

Q. How long have you been a clothing presser? A. About fourteen or fifteen years.

Q. Have you worked steadily? A. Not steadily.

Q. Were you working in the month of January? A. Two or three days; there was very little work.

Q. How about February, have you worked in February? A. I believe I worked one day; I don't remember.

Q. In December, how many days did you work? A. I did not work at all in December.

[fol. 609] Q. So in three months you have worked three days, is that right? A. Because my shop never worked.

Q. Yes or no. Never mind the because? A. That is all.

Q. You send your wife to work, don't you?

Mr. Price: I object to that on the ground that it is incompetent, irrelevant, immaterial and improper.

The Court: Yes, I guess so.

By Mr. Brancato:

Q. But your wife goes to work, doesn't she? A. Yes, she also worked when I was working.

Q. What is the last place that you worked in? A. Number 37-39 Morrell Street.

Q. For whom were you working? A. Mazelik Brothers.

Q. When did you stop working for Mazelik Brothers? A. I worked until lately, the week before I had work, and I received my check there last week.

Q. You did not work in February; you did not work in January, except for a couple of days; you did not work in December—when did you work before December? A. I think October, when the shop burned down.

Q. From October until February you worked two days, three days? A. No, not—I worked, once I worked on Sunday, then I worked

two days, then I worked one day and then last week I worked three days.

Q. Coming down to January 14th, Saturday, you said you did not see Nunzio or Napolitano at two o'clock in the afternoon, that is true, is it? A. No, I did not see them.

[fol. 610] Q. But you said that you did see Nunzio on the 13th, Friday? A. Yes, sir.

Q. You were not working that month, were you? A. I was ironing for three or four days.

Q. So you thought you would take a walk down to your Comparo's house? A. Yes, I went over to visit his wife, Mrs. Alba, because she is paralyzed, because she is sick.

Q. You just visited his wife; in your visit to Mrs. Alba, you say that you saw or met there Nunzio, that is true, isn't it? A. Yes, the one that—now whose name is Nunzio.

Q. How long a time elapsed from the time that you first entered Alba's house on Friday until Nunzio went away? A. I cannot state exactly but it might have been half an hour or probably a little more.

Q. During that half hour or probably a little more, the discussion was about the sale of narcotics, wasn't it? A. He asked for cocaine.

Q. That is, you say that he wanted to buy cocaine from Alba, is that true? A. Yes, at the beginning, that is what he said.

Q. He kept on asking for you and Alba to sell cocaine for a long time? A. For about half an hour, until he remained there.

Q. For about half an hour until he remained, Nunzio wanted to buy cocaine from you and Alba, that is true, isn't it? A. That is all the discussion was.

Q. Then when you said, "I do not care to sell," or "I never heard of such stuff before" or words to that effect, then he said, "Well, I will sell you some"; is that right? A. No, sir.

Q. Well, what did he say? A. Then he said, "Well, then, please do me this favor, then. I will supply you with the stuff and I will [fol. 611] bring the buyer and you make out that you are the owner that is selling it, so I can get more money for it."

Q. So for half an hour you repelled Nunzio in his desire to buy or sell cocaine to you; is that right? A. I did not have none myself.

Q. You told him that you did not care to handle that stuff because it was dangerous for you had read it in the papers; that is true, isn't it? A. Yes.

Q. You knew at the time that it was dangerous stuff to deal in? A. Yes, but he convinced us that the stuff which he had was not the same as that which I had read about.

Mr. Brancato: I move to strike our "convinced" as not responsive.

Mr. Kesselman: Oh, I submit, your Honor, that it is proper.

The Court: The latter part is stricken out.

Mr. Kesselman: Exception.

By Mr. Brancato:

Q. Now, you say that he told you that he had a friend, a dear friend to whom he wanted to sell some of this cocaine, that is true, is it? A. Yes.

Q. And you agreed and consented to sell it for him? A. I refused him seven or eight times, but when he convinced me that it was not dangerous or against the law, why I done it.

Q. How old are you, Centorino? A. Thirty-three years old.

Q. From what City do you hail? A. From Messina.

[fol. 612] Q. You are from Messina, are you? A. Yes, sir.

Q. Did you go to school in Messina?

Mr. Price: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: Exception.

A. Very little school.

By Mr. Brancato:

Q. You have had ample experience among your townsfolk, both in Italy and in this country, have you?

Mr. Price: What do you mean by that? I object. I don't know what it means.

The Court: Let the witness state whether he understands it or not.

Mr. Price: I object on the ground that it is incompetent, irrelevant and immaterial; nothing intelligible in the question.

The Court: Objection overruled.

Mr. Price: I except.

A. I came here when I was young.

By Mr. Brancato:

Q. You came here when you were young. You have had ample experience right here in an American City about business affairs, haven't you?

Mr. Price: I object to that as incompetent, irrelevant and immaterial, and not intelligible.

The Court: Objection overruled.

[fol. 613] Mr. Price: Exception.

A. What kind of business, what kind of experience?

By Mr. Brancato:

Q. Any business, I do not care? A. I never worked—I have been a laborer—worked all the time.

Q. You read the Italian paper, don't you? A. I read a little.

Q. The Italian papers told you on several occasions of men being convicted for selling cocaine and sent to prison? A. Yes, I read it several times.

Q. You say that this man Nunzio told you that he was going to sell or buy some cocaine?

A. Yes, he told me because he told me the stuff he was giving me was not the same stuff that I had read in the papers about.

Q. Did he give you any stuff on the 13th?

A. Yes, what he had to give me, which was the two small packages.

Q. Do you mean to say now that he gave you two packages on the 13th?

Mr. Price: That is what he said all through his testimony. I submit that is his answer.

The Court: Go right along. The question is before the witness.

Mr. Price: I object to it on the ground that it has been previously answered.

The Court: Objection overruled.

Mr. Price: I except.

A. The two samples.

[fol. 614] By Mr. Brancato:

Q. How long did it take you to consent to sell the narcotics for Nunzio from the time that you stopped repelling him?

A. About ten minutes.

Q. And within ten minutes you had two decks of cocaine in your pocket, samples, didn't you?

Mr. Price: I object to that on the ground that it is improper.

The Court: Objection overruled.

Mr. Price: I except.

A. Yes, he had given them.

By Mr. Brancato:

Q. Are these the decks of cocaine that he had given you?

Mr. Price: I object to the characterization of the exhibits.

Mr. Brancato: He spoke of cocaine himself.

Mr. Price: You put the word in his mouth; he refers to them as samples.

The Court: Two packages of cocaine.

Mr. Brancato: All right, two packages of cocaine.

Mr. Price: The only decks I know of, I play cards with.

Mr. Brancato: The decks that your clients know, they sell.

Mr. Price: I move to strike that from the record on the ground that it is improper.

The Court: You commented on the character of cards that you used.

Mr. Price: I never heard the word before.

The Court: It has nothing to do with the trial at all.

[fol. 615] Mr. Price: I except to your Honor's ruling.

The Court: The Court will strike both remarks from the record. I think, gentlemen, the time has come when this byplay must cease. The Court is disposed to punish Counsel for the Government or the defendant, in the event that any remark which is not germane to the record is interpolated by any counsel who is conducting this trial. The Court begs that the counsel will observe what the Court has just suggested.

A. Yes, the size, which are—which were given to me.

By Mr. Brancato:

Q. Do you know if these are the papers which were given to you; do you recognize them?

A. I cannot remember that.

Q. What is there different, in these packages now than at the time they were given to you?

A. I remember that as far as the size of it, small packages is concerned, they are all right, but there was nothing written on those packages when I had them.

Q. Otherwise they are the same packages, with the exception of the writing on the packages now?

Mr. Price: I object to that on the ground that that is not predicated on the evidence.

The Court: Objection overruled.

Mr. Price: I except.

A. Well, they look to be the same, but I am not sure whether they are the same.

Mr. Brancato: I offer them in evidence.

[fol. 616] Mr. Price: I object to them on the ground that they are incompetent, irrelevant and immaterial and have not been properly identified.

Mr. Brancato: I won't press it. I will offer them in evidence and withdraw them if counsel objects.

The Court: All right.

By Mr. Brancato:

Q. After this discussion and after getting these two packages or two packages of cocaine, Nunzio went away; is that right?

A. Yes, sir; Nunzio told me about the price which I was to ask of the buyer.

Q. And the price was \$19 for "C," is that right?

Mr. Price: I object to that on the ground that there is no evidence of what "C" is.

The Court: Objection sustained.

Mr. Brancato: The witness might know it.

By Mr. Brancato:

Q. What was the price that you were to sell the cocaine for?

A. At nineteen dollars.

Q. Nineteen dollars what?

A. He told me to tell him nineteen dollars. I asked him how much he will get for nineteen dollars? "Tell him you have a kilo, and that amounts to seven hundred dollars."

Q. He told you to say that it was nineteen dollars; that you had a kilo and that that would be seven hundred dollars; that is right, is it?

A. Yes, he was to give me seven hundred dollars.

Q. When you saw Napolitano for the first time, that was on Friday night, was it?

A. No, sir.

[fol. 617] Q. Saturday night?

A. Saturday night.

Q. If Napolitano says now that you told him on Saturday night that the price was nineteen dollars; seven hundred dollars for a kilo—he told the truth, didn't he?

Mr. Price: I object to the form of the question.

The Court: Objection sustained.

By Mr. Brancato:

Q. He did say what you said to him; isn't that so?

Mr. Price: I object to that on the ground that it is too indefinite.

The Court: Objection sustained.

By Mr. Brancato:

Q. If the record shows that Napolitano testified that on Friday night you told him that you wanted seven hundred dollars for a kilo of cocaine at nineteen dollars, that is the truth, isn't it?

Mr. Price: Wait a minute. I object to that on the ground it is not predicated on the testimony in this case; on the ground that Napolitano swore that he never saw this man until Saturday night.

Mr. Brancato: Saturday night, that is what we are talking about.

Mr. Price: Read the question, please.

(The last question was repeated by the reporter.)

Mr. Brancato: Insert "Saturday night," in that question.

A. What do I know about it?

[fol. 618] By Mr. Brancato:

Q. I am asking you if Napolitano testified that you said to him on Saturday night that the price of the cocaine would be at nineteen dollars, seven hundred dollars for a kilo, that is the truth, isn't it?

Mr. Price: I object to that, it is improper as to form.

The Court: Objection sustained.

By Mr. Brancato:

Q. Then you agree with him, don't you?

Mr. Kesselman: I submit he has already answered it three times.

The Court: Let him state his version of it to the jury. The jury has heard what Napolitano said.

Mr. Brancato: The same question was put by counsel for the defense fully two dozen times, and it has been allowed.

The Court: Objection sustained to this question.

By Mr. Brancato:

Q. You went down to your Comparo's house Saturday night did you?

A. Yes, sir; I did.

Q. Your comparo, Alba, came down to your house Saturday night?

A. Not Saturday night.

Q. Didn't he come and call you?

A. Not Saturday night.

Q. Did you go there voluntarily?

A. When?

Q. On Saturday night?

A. Yes, I went over there because he had told me that he was going to bring the buyer over there that night.

[fol. 619] Q. You spoke with this man Napolitano?

A. Yes, sir.

Q. You did not tell him at that time that you had a conversation with Nunzio?

A. No, sir.

Q. You did not tell him that you were going to bring the buyer over there that night.

Q. You spoke with this man Napolitano?

A. Yes, sir.

Q. You did not tell him at that time that you had a conversation with Nunzio?

A. No, sir.

Q. You did not tell him that you were going to fleece Napolitano if you could, did you?

Mr. Price: I object to that on the ground that it is improper as to form.

The Court: Objection sustained.

By Mr. Brancato:

Q. You did not tell Napolitano that you were going to trick him into buying, did you?

Mr. Price: I object on the ground that it is incompetent, irrelevant, immaterial and improper.

The Court: Objection overruled.

A. No, why should I do that because I was instructed that he was to be the buyer.

By Mr. Brancato:

Q. You very easily consented to posing as the seller, as you say?

Mr. Price: I object to that on the ground that it is incompetent, irrelevant and immaterial and improper. He has already been over [fol. 620] that five times, how it was brought about.

The Court: That is a conclusion for the jury to determine. Objection overruled.

Mr. Price: I except.

A. Yes, I certainly agreed to it when he convinced me to do so.

By Mr. Brancato:

Q. How many kilos did Patsy say that he wanted of this cocaine?

A. He did not ask me for any kilos.

Q. How much did he ask you for that night, which was Saturday night?

A. He asked me for only ten ounces. I told him it was impossible for me to give it to him that night.

Q. When did you say that you would give it to him?

A. Not before Monday evening, I told him that.

Q. But you gave him two samples, did you?

A. Yes, sir.

Q. You had those samples with you, did you?

A. Yes, sir.

Q. And then they went away, did they?

A. Not right away.

Q. How long did they stay?

A. I don't know, a few minutes. I could not state exactly. Probably five, seven, eight or ten minutes.

Q. During the times that Napolitano and Nunzio were there and you were there and Alba was there, you did not have any coffee there, did you, or any pastry?

A. No, sir.

Q. Then you say you saw Nunzio again on Monday morning; that is true, isn't it?

A. Not early in the morning, about eleven or half past eleven.

[fol. 621] Q. Of course, you know Mr. Piazza, the barber, don't you?

A. I know the barber, but I don't know that—his second name as Piazza.

Q. You know Mangamele, don't you?

A. I knew that he came here, but I did not know him before.

Q. You did not know him at all before, did you? That is true, is it?

A. Yes, sir; never was friendly with him; never knew him. I just saw him around there, but I never had no friendship with him of any sort.

Q. You were not particularly friendly with Mangiamele or "Joe" the barber, Piazza?

A. No sir.

Q. Now, tell us the first time that you met your wife Monday morning in front of your house, about what time was it?

A. She was in the house with me first.

Q. I said in front of your house, about what time was it that you first saw her?

A. It was before twelve o'clock; I don't know whether it was half past eleven or twenty minutes after eleven or a quarter to twelve rather.

Q. Where was she coming from, what direction?

A. It was not directly diagonally across, but somewhat on a line on the opposite side of the street; there is a butcher there.

Q. Where were you at the time she was leaving the butcher shop?

A. I did not see her when she came out of the butcher shop.

Q. Where were you coming from yourself?

A. I had gone out in the morning.

Q. Where had you been?

A. I was not working, I was taking a walk.

Q. Where did you go?

A. No place in particular.

[fol. 622] Q. Every place in general; just tell us where you were that morning.

A. I went down Columbia Street through Union Street; President Street.

Q. What time did you leave the house in the morning?

A. I don't remember the exact time, but I think it was around eight or a quarter after eight.

Q. So from eight to a quarter after eight until you say that you met your wife, you did nothing else but walk up and down Columbia and Union Street; is that right?

A. Well, it may have been also that I might have stopped at some corner and talked to somebody, to some workman that I knew.

Q. You met your wife there by accident outside of your house?

A. No, it is not so. That was the time that I was about to go over to get my dinner. I went upstairs and I saw that the lock was on the door and I came downstairs again and I stood in front of the door.

Q. And your wife came over; is that right?

A. Yes, sir.

Q. And you and your wife stopped to have a talk out on the sidewalk?

A. Right in front of the door there.

Q. In front of the door; you did not have your back up against the wall at any time, did you?

A. Not at that time.

Q. Until you went up to your house to have your lunch, nobody came to you and whispered in your ear, did they?

A. Andy, yes.

Q. He whispered to your ear, did he?

Mr. Price: He just said it. I submit, Judge, that he just said he did.

A. It was about as close as you and I are; it was about two or three feet away from my wife.

[fol. 623] By Mr. Brancato:

Q. Two or three feet away from your wife?

A. Yes, sir.

Q. And did he come up to your ear and whisper to your ear?

Mr. Price: I submit that he has already answered twice.

The Court: Objection overruled.

A. (By the Interpreter.) Indicating the way I am standing with him now.

(By the witness through the interpreter.) That is the way that I spoke to him.

By Mr. Brancato:

Q. But not to your ear; he did not whisper to your ear, did he?

A. No, sir, just the way you and I are. (Indicating interpreter.)

Mr. Price: Have the record indicate about a foot or a foot and a half apart, say, Judge?

The Court: You gentlemen can agree on that.

Mr. Brancato: If that is a foot and a half, why, I am two inches tall.

The Court: A foot.

Mr. Brancato: About two feet.

Mr. Kesselman: Oh, no.

Mr. Brancato: From head to head.

Mr. Kesselman: Get a tape measure if there is any question about it.

Mr. Price: Have it one and a half feet or two feet; is that satisfactory? We won't quibble over it.

Mr. Brancato: No, you won't quibble over it.

[fol. 624] By Mr. Brancato:

Q. Just what was the last thing that you claim Nunzio told you before he went away?

A. He said, "Here, I have brought you the stuff." I said, "Where is it, in the newspaper or in packages?" He said, "Yes, it is in packages, wrapped up in a newspaper."

Q. Is that the last thing that he said to you?

A. He told me, "Don't say anything to your wife about this stuff here; see that you keep it in a safe place." I said, "All right."

Q. Is that all that was said?

A. Yes, then when he went about a pace away from — he said, "I am going, good bye, I will see you tonight."

Q. You have had that little talk with your wife too; I will see you tonight, did you not?

Mr. Price: I object to that on the ground that it is too indefinite.

By Mr. Brancato:

Q. Have you talked this case over with your wife?

Mr. Price: I have no objection to that.

A. No, sir.

By Mr. Brancato:

Q. Do you mean to tell this Court and Jury that you have not spoken about this case with your wife since you were arrested?

A. Certainly; since I have been out on bail we did speak about this matter.

Q. Did you tell her that this man Nunzio said, "Good night; I will see you tonight"?

Mr. Price: I object to that on the ground that that is not predicated on the testimony.

[fol. 625] The Court: Objection overruled.

Mr. Price: I except.

A. No, I did not.

By Mr. Brancato:

Q. You did not tell her that Nunzio had said to you, "I will see you tonight."

A. No, sir.

Q. Did your wife say that she was going to be in Court and testify to a conversation that you had with Nunzio wherein you said, "Good bye, I will see you tonight"?

A. When I was out on bail my wife questioned me, said, "Why was you arrested?" I called her attention, "Do you remember that man that gave me that package that day?" She said, "Yes." I said, "That is why I was arrested."

Q. Did you tell her to come to Court and testify that he had said, "I will see you tonight"?

A. No, I did not.

Q. What was the talk that you had with your wife about this case before trial?

A. She asked me, how did I get myself into this trouble.

Q. Did she ever tell you that she opened the package after she had gone into the house and you had left?

A. No, she did not.

Q. How many people did you see while you were talking to your wife as you state, on January 16th, in the morning?

A. My wife, the boss, the barber and the barber's friend, who motioned me with their hands to me this way (indicating); there is always people going up and down there who knows me.

Q. Do you know anybody else that you saw?

A. I don't remember.

Q. But these people who saw you were on or near about at the [fol. 626] psychological moment that you were getting this package from Nunzio, is that right?

Mr. Price: I object to the question as to form.

The Court: Objection sustained.

By Mr. Brancato:

Q. The fact is that all these men who saw you were about you at the time that you say Nunzio gave you a package, is that right?

A. They told me that, I don't know whether they saw it or not; when I came out on bail they told me that.

Q. Were you ever convicted in Italy of any crime, in Messina?

A. I was a boy, no, sir.

Q. How old were you when you came here?

A. About fourteen or fifteen years.

Q. You are here about fifteen years?

A. About nineteen or twenty years.

Q. And January 16th at night time, you say that you were home about eight o'clock?

A. Yes, sir; I was.

Q. Your comparo came to the house?

A. Yes, sir.

Q. Did he come to call you?

A. Yes, sir.

Q. Did he tell you that somebody was at his house, yes or no?

A. Yes.

Q. Did he tell you that Pasquale was there, and Nunzio?

A. What he told me was he said that a friend of yours is there, and the man who is going to buy.

Q. Pursuant to that conversation that you had both you and your comparo Alba left your house and went back to 138 Union Street, is that right?

A. Not directly, we did not.

Q. You stopped at a drug store?

A. Yes, sir.

[fol. 627] Q. And then you went to 138 Union Street?

A. Yes, sir.

Q. Now, when you got inside at 138 Union Street you did find Napolitano there?

A. Yes, he was there.

Q. Immediately a discussion arose about the cocaine?

A. Yes, sir.

Q. Did you tell him that you wanted seven hundred dollars for the cocaine?

Mr. Price: Tell who?

By Mr. Brancato:

Q. Napolitano?

A. Yes.

Q. Did you tell him also that you did not have the cocaine with you at the time?

A. I told him that I had it at home.

Q. Did you ask him to come down to another place, that you would give him the cocaine?

A. Yes, sir.

Q. Then you went out together with Alba, Napolitano and Nunzio?

A. Yes, sir; the four of us.

Q. You stood outside of 138 for a few moments?

A. We did not stop, not in front of the door.

Q. Outside or near the door, five or ten paces away?

A. Yes, sir; about ten or fifteen paces away.

Q. That is true, isn't it?

A. Yes.

Q. It was then that Patsy told you that if you did not bring the stuff up to him that he would go away; he would not buy?

A. Napolitano told me that.

Q. That is true?

A. Yes.

Q. Then it was that Napolitano and Nunzio and Alba returned into number 138, isn't that so?

A. Yes, the four of us went back.

Q. You say that you went back?

A. Yes, sir.

[fol. 628] Q. Did you come out again?

A. I alone, yes, sir.

Q. And then you went down home?

A. Yes.

Q. Now, at the time that your Comparo, Alba, first came to your house on Saturday night and told you that Patsy and Nunzio were waiting at his house, you knew that they were going to buy the cocaine, isn't that so?

A. Yes, certainly.

Q. But you did not bring the cocaine with you at that time, did you?

A. No, sir.

Q. Then you say that you went back home and got the package of cocaine, isn't that right?

Mr. Price: I submit that he fix the time. He has just been talking about Saturday night.

Mr. Brancato: We are talking about Saturday night now—or Monday night?

Mr. Price: The last question was Saturday night.

Mr. Brancato: We are speaking about the 16th, the night of the sale.

Mr. Price: May I have the record read?

Mr. Brancato: He understood it. I submit, if the Court please, he has answered the question quite well.

(The following question was repeated by the Reporter: "Then it was that Napolitano and Nunzio and Alba returned into number 138, isn't that so?

A. Yes, the four of us went back.")

By the Court:

Q. What are you speaking of now?

A. Of Monday.

Mr. Brancato: The 16th.

[fol. 629] Mr. Price: Let us have the rest of the record read.

(The reporter then repeated the four questions and answers following the last one repeated above.)

Mr. Price: You see?

By Mr. Brancato:

Q. At the time that your Comparo came down to your house on Monday night and told you that Napolitano and Nunzio his friend were at his house, you knew that they were there for the purpose of buying cocaine from you; isn't that so?

A. Yes, he had come there with the buyer to buy the cocaine.

Q. You knew that at that time when your comparo came, you were to put through the deal of selling cocaine?

A. Not the way that you stated though. Yes, going to sell it; going to sell it, but not the way that you state.

Q. You were going to sell it at the time that your comparo came to call you?

A. No, I did not bring the stuff with me then.

Q. I know you did not bring it but I am asking you when your comparo came to your house about eight o'clock on Monday night and said that Nunzio and the man were there at the house, didn't you understand him to say or didn't you know that they came for the purpose of getting the cocaine?

A. Yes.

Q. And you did not take the cocaine at that time, did you?

A. No, sir.

Q. But you came back for it afterwards, didn't you?

A. Yes, sir.

[fol. 630] By the Court:

Q. Why didn't you take it down the first trip?

A. Because I was not instructed that way. They did not tell me to bring the cocaine with me, for I thought after I had met them that they were coming to my house to get it.

Mr. Kesselman: I do not want to break in on Mr. Brancato's cross examinaion, but your Honor will recollect that I told you yesterday that it would be necessary for me to leave at 4:30. Mr. Brancato says he will have at least half an hour more of cross examination. If it were for a few moments, why, I would be willing to have him finish.

I will ask your Honor to adjourn until Monday morning.

The Court: Court will adjourn until Monday morning. Bear in mind that it will be at ten o'clock Monday morning, gentlemen.

Adjourned to March 20th, 1922, at 10 o'clock A. M.

UNITED STATES

vs.

ALBA et al.

Brooklyn, New York,

March 20, 1922—10 o'clock a. m.

Before Hon. Garvin, J., and a Jury

Appearances: Same as heretofore.

[fol. 631] ANTONINO CENTORINO resumes the stand for further examination:

Cross-examination by Mr. Brancato:

(Continued through the same Interpreter.)

Q. You said Friday that after you went to 138 with Alba that you came back to your home to get the parcel of cocaine which you say you had received?

Mr. Price: I object to that unless he specifies the time.

Mr. Brancato: Eight o'clock.

Mr. Price: What day?

Mr. Brancato: Monday night.

A. Yes, sir.

By Mr. Brancato:

Q. Where did you find the package?

A. At the very place where I had left it, just in the bed room or near one of the bedrooms, where my children sleep.

Q. Was it in the same condition as you had left it there that morning?

A. I saw it was the same way.

Q. What did you do after you picked up the package from this closet; what did you do with it?

A. I went downstairs.

Q. Did you carry it in your hand or did you put it in your pocket or which?

A. I had it in my hand.

Q. Then you went across the street to 167 Columbia Street, the grocery store where the Agnello boys live?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Did you buy anything in there?

A. No, sir.

[fol. 632] Q. Did you speak with anybody in there?

A. With Frank Agnello.

Q. Just what did you say to Frank Agnello?

A. I said, "Frank, would you be kind enough to bring this package for me as far as 138 Union Street."

Q. That package was not very heavy, was it?

A. No, it was not.

Q. You were not carrying any other packages, were you?

A. No, sir.

Q. You just asked Frank to carry the package for you?

A. Yes.

Q. Then you say he went inside to the back?

A. Yes, he went out to get his overcoat.

Q. He was inside getting his overcoat, then you say you opened the package?

A. Yes, I opened it; I noticed that there were ten packages of blue paper, so he could put them in his pockets.

Q. These ten packages were like those in evidence—which package do you say?

Mr. Price: Give the exhibits.

By Mr. Brancato:

Q. Indicating Government's Exhibits 5 and 7 in evidence.

A. The color of the paper is identical but I don't know whether the packages which were in that package were smaller or bigger.

Q. Did you see the label on those packages, those blue packages?

A. No, sir; I did not.

Q. You did not see them; did you look at them?

A. No, because immediately after I got through opening the package he returned right away and I helped him to put them in his pockets.

[fol. 633] Q. Did you know what was in those packages?

A. Andy had told me it was cocaine.

Q. So you knew it was cocaine in those packages? Yes or no?

A. Yes, because he told me so.

Q. You read the label on those packages, did you?

A. I did not read them.

Q. There is a label on those packages, isn't there?

Mr. Price: I object on the ground that the packages speak for themselves.

The Court: Objection sustained.

By Mr. Brancato:

Q. Look at that package, look at the label on it. Do you see the writing, the printed word "cocaina"?

A. Yes, "cocaina."

Q. You know that means cocaine, doesn't it? You know it means that. That is the question?

A. I don't know what it means.

Q. You don't know that the Italian word for cocaine is cocaina?

Mr. Price: I object to it on the ground that it is already answered; he said he did not know.

The Court: Objection overruled.

Mr. Price: Exception.

A. No, I don't.

By Mr. Brancato:

Q. When you were reading the Italian paper that you told us about the other day that it was dangerous to deal in cocaine, just what word did you read in the Italian paper?

Mr. Price: I object to that as incompetent, irrelevant and immaterial.

[fol. 634] The Court: Objection overruled.

Mr. Price: Exception.

A. The word "cocaina."

By Mr. Brancato:

Q. You spell that c-o-c-a-i-n-a?

A. Yes, sir.

Q. That is the same word on the packages, on the label?

A. Yes, sir; it is.

Q. Now, you say that Frank Agnello then came out from the back of the store and you gave him these packages; is that true?

Mr. Price: Is that Monday night?

Mr. Brancato: Monday night we are talking about, yes.

A. Yes, sir; put them in his pockets.

By Mr. Brancato:

Q. He put them in his pocket?

A. Yes, sir.

Q. Who put them in his pockets, you or Agnello?

A. I helped him to; both of us done it.

Q. Then you walked out of the store, did you?

A. Yes, sir.

Q. You said that you stood right in front of the store; is that right?

A. Yes, right outside of the grocery store.

Q. When you were standing in front of the store you say that you watched young Agnello walk up through Columbia Street to Degraw Street; is that right?

A. Yes, until he reached the corner and he turned.

Q. How long were you waiting there in front of the store until the other two defendants, Pace and Thomas Agnello came out of the store?

A. During the time that had elapsed by my watching Frank Agnello going towards Columbia Street—Degraw, they opened the [fol. 635] door and walked out.

Q. How far is the store 167 Columbia Street from Degraw Street?

A. That I could not state exactly, on the distance of it, for I never counted how many stores there is from that place up to the corner.

Q. Isn't 167 Columbia Street about the middle of the block?

A. No, I do not believe so, that it is the center of it, because on the other side is Harrison Street, and that part of the store is at the connection of the side I was standing.

Q. Is it nearer to Harrison Street than it is to Degraw?

A. It is closer to Degraw Street.

Q. Then from the time that it took young Agnello to walk from the store to Degraw Street, then Pace and Tom Agnello came out of the store, is that right?

A. Yes, Pace and Tommy.

Q. Had they been in the back of the store?

A. I did not see them. I did not go in the back room. I don't know where they were.

Q. They came from the store, however, did they?

A. Yes, from the grocery store.

Q. When you were in the store, giving the *pacakes* to young Agnello, you did not see Tom or Pace, did you?

A. I did not.

Q. Then when they came out, the three of you walked up Columbia Street to Union Street, is that right?

A. Yes, sir.

Q. You walked up to Union Street to Number 138?

A. Yes, sir.

Q. Now before you went in Number 138 Union Street, did you pass the iron railing in front of the house? Look at the picture.

A. (Witness looking at picture.) Yes, we were coming from this direction. (Indicating.)

[fol. 636] Q. You saw the pushcart inside of the railing, did you?

A. Yes, sir; there was a pushcart.

Q. You saw the windows?

A. Yes, sir.

Q. You saw that there was no hole in the glass?

A. That evening I did not pay any attention to it, but I know that I saw that there was never any hole in the glass.

Q. Did you look to see whether the windows were covered when you passed by the grating?

A. You could not look in them.

Q. Answer my question please.

A. Yes, there was.

Q. Did you look to see if there was any paper on those glasses when you passed by the railing?

Mr. Price: I submit that he has just answered the question. "Yes, you could not look in, there was."

The Court: Objection overruled.

Mr. Price: I except.

A. Yes, because it was always that way.

Mr. Brancato: I move to strike out the answer.

A. I looked.

By Mr. Brancato:

Q. You looked?

A. I looked.

Q. When you saw that there was paper in the window, then you walked inside in the hall, is that right?

A. No, sir.

Q. What did you do?

A. No, sir; we did not, because when we got near the door of

138—

Mr. Brancato: I move to strike out the answer.

[fol. 637] Mr. Price: I submit he should be permitted to finish his answer.

Mr. Kesselman: I make the same request.

Mr. Brancato: The question is, after he passed the railing; not before he got there. I have got him now as far the door, the hall door. I asked him what did he do at the time that he got at that door.

The Court: That question may stand.

Mr. Price: I ask your Honor in the future to instruct Mr. Brancato that he must permit the witness to finish his answer without interruptions before he makes any motion.

Mr. Brancato: The answer here is "Before I got there——". Now, evidently this is incompetent.

Mr. Price: I ask that you have the question read and the answer repeated; let the witness finish his answer.

The Court: Very well, that may be done.

(The last question and answer were repeated by the reporter.)

The Court: That answer may stand; put the next question.

By Mr. Brancato:

Q. After you got past the house, rooms "A" and "B", you said that you went inside the hall; is that right?

A. No, sir.

Q. When did you go into the corridor? Didn't you go in after you passed rooms "A" and "B"?

A. We passed them two rooms but we stopped in front of the door.

Q. You stopped in front of which door, marked in Defendant's [fol. 638] Exhibit A?

A. Right in front of this door. (Indicating.)

Q. Put a mark on there "O".

A. (Witness does as requested and marks "O" on exhibit.)

The Court: The record shows that the witness marked the photograph shown him with the letter "O".

By Mr. Brancato:

Q. When you got to the place which you have indicated with the letter "O", what was done?

A. Tom Agnello saw his brother across the way and he asked me, "What is he doing there?" I said, "Why, I sent him over here with a package, some stuff to bring over here."

Q. Up to that time you had not told Tom that you had given his brother Frank a package?

A. I did not say a package; I said, "Some articles"; I don't know what it is.

Q. At the time that you had this talk, you knew that the articles which you had given to Frank consisted of cocaine?

A. Yes, I knew it because Andy had told me about it.

Mr. Brancato: We have the "because" a dozen times. You knew it, didn't you?

Mr. Price: I object to it upon the ground that he has already asked the question at least three times.

The Court: Objection overruled.

Mr. Price: Exception.

By Mr. Brancato:

Q. Yes or no is the answer I want.

A. Andy told me; yes.

Q. You knew it?

A. Sure, he told me.

[fol. 639] Q. You now know that the only defense that you have in this case is "Andy", don't you?

Mr. Price: I object to that and submit that it is highly improper.

The Court: Objection sustained.

By Mr. Brancato:

Q. You do know, don't you, that you are going to try to put the blame on Andy in this case, don't you?

Mr. Price: I object to that as incompetent, irrelevant and immaterial and improper.

The Court: Objection overruled.

Mr. Price: Exception.

A. The stuff here is—why, he is the man.

Mr. Brancato: I move to strike out the answer as not responsive.

The Court: Motion denied. Can you answer the question, yes or no?

(The last question was repeated by the reporter.)

A. No, sir.

By Mr. Brancato:

Q. You don't know that. Then you went in the hall with the other three defendants, didn't you?

A. They did not want to go in.

Q. Will you please don't try to exculpate anybody else, answer my question.

Mr. Price: I submit that is improper and ask your Honor to tell Mr. Brancato that he must desist.

[fol. 640] The Court: Address all remarks to the Court except questions to the witness.

By Mr. Brancato:

Q. Are you now trying to take the blame for yourself and let the other defendants out?

Mr. Price: I object to that as incompetent, irrelevant and immaterial, and improper.

The Court: Objection overruled.

Mr. Price: I except.

By Mr. Brancato:

Q. Yes or no; I do not want any speeches.

The Court: Let the answer be given.

A. I would not be such a stupid as all that for I am the father of a family.

Mr. Brancato: I move to strike out the answer.

Mr. Price: I submit that—

The Court: Motion denied.

By Mr. Brancato:

Q. Who called Frank Agnello from the other side?

A. I did.

Q. Did you tell his brother that he was carrying cocaine for you?

A. No, sir.

Q. You are a good friend of Thomas, aren't you, Tommie Agnello?

A. No, not very good.

Q. Well, you were friendly enough to invite him in and have a cup of coffee, weren't you?

A. There was nothing wrong about that; you must not be so very intimate with a person to do that.

Q. Oh, I see. You invite anybody that you know for a cup of coffee or a piece of pastry?

[fol. 641] Mr. Price: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: I except.

A. Yes, as I knew him and we were together, there was nothing wrong with my doing that.

By Mr. Brancato:

Q. He told you that he was going to a club, didn't he?

A. Yes, that is what he said, he was going to the club.

Q. Knowing that he was going to the club, you said, "Come in and have a cup of coffee and a piece of pastry," is that right?

A. Yes, I repeat that a second time.

Q. But you knew him enough to invite him or treat him, didn't you?

Mr. Price: I object on the ground that it is incompetent, irrelevant and immaterial; answered three or four times.

The Court: Objection overruled.

Mr. Price: I except.

A. Well, the usual courtesy, certainly, I had to do that. I asked him the first time and he refused; I asked him again——

By Mr. Brancato:

Q. You insisted on him coming in to have a cup of coffee and a piece of pastry, being friendly with him, as you say you are, you did not tell him that you were having his brother commit a crime?

Mr. Price: I object to that on the ground——

The Court: Objection sustained.

[fol. 642] By Mr. Brancato:

Q. But being as friendly as you are with him, you did not tell him that you were having his brother carry the cocaine for you?

Mr. Price: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Brancato:

Q. You went inside, did you, the four of you?

A. Yes, sir.

Q. Who called Frank, did you say?

A. I did.

Q. And he came inside?

A. Yes, sir; the four of us.

Q. Did anybody knock at the door?

A. I did.

Q. And the others followed?

A. Yes, sir.

Q. You went in the kitchen?

A. Yes, sir.

Q. You found Nunzio there, Patsy and Alba?

A. Also Alba's wife.

Q. Then you walked into the room next to the kitchen?

A. Not at that time—not right away.

Q. But you did go inside?

A. Yes, not right away, but some time after.

Q. How long after? How many minutes?

Mr. Price: I submit when the witness is answering the interpreter, Mr. Brancato should not ask him another question.

The Court: Objection sustained.

Mr. Brancato: I want him to answer in minutes, if he knows.

Mr. Price: Will you please permit the witness to answer the question, Judge?

The Court: Let that be included in the question so as to save time.

Mr. Price: Yes.

[fol. 643] By Mr. Brancato:

Q. How many minutes did it take about before they went inside?

A. I could not say—state the exact time. It may have been a second, maybe two seconds, maybe two minutes.

Q. The most you saw is two minutes?

A. I did not keep time on that; it may have been two or three minutes, I don't know.

Q. The fact is, after two or three minutes, you and the other defendants walked into this room next to the kitchen, is that right?

A. Yes, immediately after my Godfather lit the gas, he said, "Come on in," and we all went in.

Q. During the two or three minutes that you were all waiting in the kitchen, the defendant Pace was there in the kitchen too, was he not?

A. Yes.

Q. And Tom Agnello was also there?

A. Yes, sir.

Q. And Frank Agnello was there?

A. Yes, sir.

Q. And Patsy was there?

A. He was sitting there.

Q. And Nunzio was there?

A. He was also sitting there.

Q. Did you introduce Patsy or Nunzio to any of these men?

A. No, sir.

Q. Why, these men were friends of yours; they were acquaintances of yours, weren't they?

The Interpreter: Which one?

By Mr. Brancato:

Q. All of them?

A. Who? Who do you mean?

Q. Why, these men, Patsy and Nunzio, you had met them?

A. No, not all of them.

[fol. 644] Q. Why, you were going to do business with Patsy, weren't you?

A. Why, Pasquale, yes.

Q. Pasquale; you were going to do a big business, seven hundred dollars' worth.

A. Yes, I was to receive seven hundred dollars and then deliver the stuff as I was instructed by Andy.

Q. Don't forget the "instructed by Andy" part.

Mr. Price: I submit that is improper and I ask your honor to tell Mr. Brancato he must desist from it.

The Court: Be good enough, Mr. Brancato, to confine yourself to questioning the witness without comment.

Mr. Brancato: I will ask the Court then to instruct this witness to answer the questions directly, and unless there is something mentioned about Andy not to volunteer the information. He is doing it every time for a purpose.

The Court: If there is any purpose involved, the jury can see it just as well as anybody.

By Mr. Brancato:

Q. Did you invite Patsy and Nunzio inside to have a piece of pastry or a cup of coffee with your friends?

A. No, sir.

Q. You simply—you five went inside to have your coffee and pastry without inviting the other two men who were in there; is that right?

A. No, not all of us to have coffee and pastry, but I asked my Godfather to treat Pace and Tom Agnello, as they had to go away to some place else.

[fol. 645] Q. Oh, I see. You were simply going to treat Pace and Tom Agnello alone, and all the other were to remain in another room; is that right?

A. And that is just what happened.

Q. Your generosity extended only towards these two defendants, Pace and Tommy Agnello?

Mr. Price: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Brancato:

Q. The fact is that Frank Agnello also went inside, didn't he?

A. Yes, he came in.

Q. Although you only intended to treat Tommy Agnello and Pace, Frank was also inside in that room?

A. Yes, I said, "Friends, come in," of course naturally he walked in too. There was no harm in that.

Q. You ordered two cups of coffee, one for Pace and one for Tommy Agnello?

A. I did not order any coffee.

Q. Well, two pastries, then?

A. I did not order them at all. All I said to my godfather was, I said, "Treat these two, these friends."

Q. At the time that you said that you only had in mind treating Pace and Tommy Agnello?

A. Yes, because they were in a hurry; they were about to go.

Q. How long were you in this room next to the kitchen before something happened?

A. Very quickly after we got in there, or as quick as we got in there; I did not even have a chance to go near the table, all I had [fol. 646] a chance to see there was that there was a box of pastry on the table; the gas was lit, and all of a sudden we heard a shot from a revolver.

Q. So the box of pastry was on this table before you had ordered it; is that right?

A. I don't know that, when I asked—when I told my godfather to treat these friends, and they went in there to light the gas, the probabilities are that that box may have been there.

Mr. Brancato: I move to strike out "probabilities" and everything that followed.

The Court: Motion granted.

By Mr. Brancato:

Q. A shot was fired through the window?

A. Yes, sir; through the window.

Q. You saw the shot coming through, did you?

A. Yes, sir, I did.

Q. You saw the person outside who fired it?

A. How could I see it?

Q. Then at that time a crash came in and the other agents entered the house; is that right, entered the room you were in?

A. They—yes, after the shot they all ran in.

Q. A search was made?

A. Yes, all of us were searched.

Q. Those packages, some were found on Tommie—Frank Agnello?

A. He had them all.

Q. Were any on the table?

A. No, sir.

Q. Had you spoken with Pasquale or Nunzio in that room before the shot was fired?

A. No, not a word.

Q. Had anybody spoken in that room?

A. No, sir.

Q. Nothing was said?

A. Nothing at all.

[fol. 647] Q. When you entered there, was not the gas lit?

A. Yes, my godfather had lit the gas.

Q. After the officers came in you were searched?

A. Yes, they did.

Q. Who searched you?

A. I don't know the first time, I don't know who done it; I don't remember who it was.

Q. Do you talk English?

A. A little bit.

Q. Did you speak to any of the officers?

A. No, sir.

Q. You did not say a word to any of them?

A. No, sir.

Q. Not a word?

A. No, sir; not a word.

Q. Is that right?

A. All they asked me is where I lived; that is all.

Q. You told them where you lived?

A. I told them number 172 Columbia Street.

Q. So from the time that the officers came in that room until they took you out, took you to the station house, the only thing they asked you was your address, and all you said was where you lived; is that right?

A. That is all I was asked.

Q. All that time Nunzio was in that room, wasn't that right?

A. No, sir.

Q. What room was he in?

A. He was in the kitchen.

Q. But he was on the premises, wasn't he?

A. Sure, yes.

Q. You did not tell the officers that Nunzio was the man that had given you the stuff, did you?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial.

[fol. 648] The Court: Objection overruled.

Mr. Price: I except.

A. They did not ask me.

Mr. Brancato: All right; that is all, sir.

Mr. Price: That is all.

VINCENT MANNINO, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. Where do you live?

A. 152 Degraw Street, Brooklyn.

Q. Do you know Frank Agnello?

A. Yes, sir; I know Frank Agnello.

Q. How long?

A. I have known him for the past five years.

Q. Has he ever worked for you?

A. No, he has never worked for me.

Q. Do you know any of the people that know him down in that neighborhood?

A. Yes.

Q. Have you ever heard his character discussed?

Mr. Brancato: I object to that.

Q. (Continuing:) As to honesty and decency?

Mr. Brancato: I object to it, unless he states the persons with whom he has talked about his character.

The Court: Objection overruled.

A. Yes, I have.

[fol. 649] By Mr. Price:

Q. What is his character, good or bad?

A. I have always known him to be——

Q. No, what is his character, good or bad?

The Court: What is his reputation?

A. It is good, good reputation.

By Mr. Price:

Q. A good boy, isn't he?

A. Yes, sir.

Mr. Price: That is all.

Cross-examination by Mr. Brancato:

Q. You are a friend of his, aren't you?

A. No, sir; I am not a friend of his.

Q. You know him five years?

— I have known him, yes, sir.

Redirect examination by Mr. Kesselman:

Q. He palled around with your younger brother, didn't he?

A. Yes, sir.

Mr. Brancato: I object to that.

The Court: Objection overruled.

Mr. Brancato: I understand he was being examined by Mr. Price.

The Court: Yes.

Mr. Price: I will ask him.

By Mr. Price:

Q. Does he pal with your younger brother?

A. Yes, sir.

Q. What is your business?

A. I am a real estate broker.

Q. Down in that neighborhood?

A. Yes, sir, 109 Degraw Street.

[fol. 650] Q. How long have you been in business there?

A. I have been in business for myself for the past year; I have worked for different persons for the past five years.

By the Court:

Q. You like Frank Agnello, don't you?

A. Do I like him?

Q. Yes.

A. I don't know whether I like him or not. I simply—when he wanted to become a friend of my brother, I simply investigated and found out that he was a fit companion for my kid brother.

Q. Do you like him?

A. What do you mean by "Do I like him?"

Q. Don't you understand the question?

A. Why, yes, I understand—

Q. If you do not know what I mean, I have no further questions on that score. Would you like to see him acquitted of this crime?

A. Why, if—of course I would like to see him acquitted of the crime.

Mr. Brancato: That is all.

STEPHANO ALBA, one of the defendants, called as a witness on behalf of the defendants and having been first duly sworn, testified as follows:

Direct examination by Mr. Price:

(A. O. Tucci acting as interpreter.)

Q. Where do you live?

A. 138 Union Street.

Q. Whom do you live there with?

A. My wife.

Q. How long have you lived at 138 Union Street?

A. Three years.

[fol. 651] Q. Before that did you have a pastry store on Union Street?

A. Yes, two years.

Q. Where?

A. At 143 Union Street.

Q. How long ago was it that you had that store at 143 Union Street?

A. Two years ago I left there; that I stopped there because I am sick.

Q. Do you do any business at your home, 138 Union Street?

A. How would I live then? I do, yes; yes, sir, I have customers; I have weddings, I have friends.

Q. How long do you know the man who testified here, Nunzio Dispenza?

A. About eight months; six or eight months.

Q. Did you ever see him at the time that you had your store on Union Street?

A. I don't remember.

Q. Where did you first see him?

A. It is about seven or eight months ago. I have been sick for quite some time.

Mr. Brancato: I object to that answer, the last part of the answer.

The Court: Strike out the part about being sick.

Mr. Price: Let us have the whole answer. I submit that Mr. Brancato may move to strike it out then.

Mr. Brancato. I object.

The Court: Had you finished your answer?

The Witness: No.

The Court: Please finish it.

Mr. Brancato: May I ask an objection at this time?

The Court: Not at this time.

[fol. 652] A. I was going to buy some milk and eggs for that is all I can eat and up against the wall at the corner of Union and Columbia, I heard a man say "Hello, Boss"——

The Witness (interrupting): Union and Hicks.

The Court: Let it be noted on the record that the witness stated he did not speak English, and corrects the Interpreter as the Interpreter is giving to the stenographer in English the answer of the witness.

Mr. Price: I submit that the witness said two words; that the Interpreter said "Union and Columbia" and when he said that, that the witness said, "Union and Hicks Street."

The Court: Let that appear.

Mr. Price: That is the only correction he made.

Mr. Brancato: May I have that answer stricken out? He was buying eggs and milk. That is the objection of having these people testify to a long story.

The Court: This is an intelligent jury and they can see when a witness is answering something that is not responsive to the question. It is obvious that the witness is doing it for an effect, and I am perfectly satisfied that the jury will give that such importance as it merits.

Mr. Brancato: With that explanation of the Court, I am perfectly satisfied.

The Court: Strike out all of the answer referring to milk and eggs.

[fol. 653] By Mr. Price:

Q. So you met him about eight months ago on the corner of Hicks and Union Street; is that correct?

A. Yes, sir.

Q. That is about eight months from now?

A. Yes, about eight months ago.

Q. And at the time that you met him, did he come to your house?

A. When I saw him there, after he said "Hello" to me, I said, "Why, I don't know you." He said, "Don't you know me? I am one of your customers"

Q. Then after that did he ever visit you at your home, number 138 Union Street?

Mr. Brancato: If the Court please, I object to all this line of questions as incompetent, irrelevant and immaterial, not within the issues.

The Court: Objection overruled.

A. Yes, sir.

By Mr. Price:

Q. How many times before the 13th day of January, 1922, was he in your home at 138 Union Street?

Mr. Brancato: I object now, if the Court please, to the leading statement of "January 13th;" that is a very important qualification.

The Court: Objection overruled.

A. About two or three times.

[fol. 654] By Mr. Price:

Q. Now, I ask you to look at this paper, Defendant's Exhibit A, and direct your attention to the windows "A" and "B."

A. (Witness looks at photograph.) Yes, sir.

Q. Can you tell me when the paper which is on the windows "A" and "B" was put there, about, and by whom?

A. This paper has been put on there almost a year now. That was put on there by my son.

Q. By your son. Do you mean the witness sitting here, who has already testified? Stand up.

(A person stands up.)

A. Yes, sir.

Q. Now, was that paper on the windows as shown by Defendant's Exhibit A, on the night of January 16th, 1922?

A. Yes, sir.

Q. When the officers came into your home?

A. Yes, sir, it was.

Q. Now, I show you defendants' exhibit D, and ask you to look at that?

A. Yes, sir.

Q. Now, in front of one window there is a pushcart.

A. Always been there.

Q. In front of that window?

A. Yes, sir.

Q. And was it there on the night that the officers shot through the window and came into your home?

A. Yes, sir.

Q. Do you remember, Friday, January 13th, 1922?

A. Yes, sir.

Q. Did anybody come to your home on that day?

A. Yes, sir.

Q. Who?

A. Nunzio.

Q. That is the man who testified in this case?

A. Yes, sir.

[fol. 655] Q. And was there anybody else in your home when Nunzio came there?

A. No, sir; I was alone; I and my wife.

Q. And after Nunzio had been in your home for some time, did anybody else come to your home?

A. Yes, sir; my comparo, that is godfather, came over to visit me—my wife; she is lame, crippled.

Q. Who was that, Mr. Antomino Centorino?

The Court: Godson?

Mr. Price: They call each other "comparo."

The Court: Each one calls the other "Godfather?"

The Interpreter: Yes.

Mr. Brancato: He has got the whole thing twisted. Comparo is not Godfather. There is a relationship——

The Court: It does not make much difference. Certainly they were very intimate. This is conceded, I should judge.

Mr. Price: Mr. Brancato knows that they call each other——

Mr. Brancato: The relationship of "comparo" is a very sacred one; if it is between these two people, they were very good friends, that I concede.

Mr. Price: So do I.

The Court: So there is no mistake about it.

A. Yes, I mean Centorino.

By Mr. Price:

Q. When Centorino came there, and this man Nunzio, who testi-
[fol. 656] fied, whom you have described as "Andy" was there, will
you please tell the Court and jury everything that took place at that
time?

A. Nunzio came to my house, and——

Q. May I interrupt here? Will you please tell the witness for
me that I do not want him to give me any conversation that he had
with Nunzio until after Centorino, the defendant, came there; that
is what I am asking you about.

A. He spoke to me and he asked me——

Q. (Interrupting.) Is that when the defendant Centorino was
there?

A. No, sir; when I was talking—when he was talking to me,
Centorino had not arrived.

Q. Will you please get down to the time that he spoke to you
when the defendant Centorino was there?

A. I was arguing with him over there and I was telling him that
I did not deal in that type of stuff, I did not know nothing about it;
all I know that I make pastry, that is all.

Q. Tell me, won't you please, as briefly as possible, everything
that happened between you, Nunzio and Centorino after he came
there?

A. My comparo entered, and he saw that I was somewhat excited
arguing with this man. He said, "What is the trouble, comparo,
what happened?"

Q. Go ahead?

A. This Nunzio—I know him also as "Andy" described himself
as such in there, got talking to us and he said, "Why could we not
get a couple of kilos of this stuff? You know in this Italian Sec-
tion over here, you ought to be able to get it for me."

Q. Go ahead. What did you say and what did Centorino say?

A. He said, "Don't worry about that. I will furnish you with
[fol. 657] the stuff because I have a dear friend of mine who desires
to purchase it, but as he is a good friend of mine, I cannot represent
myself to sell it, so I am going to give you the stuff and you sell it."

Q. To whom did he say that, to you or Centorino?

A. No, he was with my comparo, Centorino.

Q. That is what he said to Centorino?

A. Yes, sir.

Q. Did you tell Centorino at that time what the stuff was?

A. My comparo, Centorino, said to Nunzio, "Why, you know
this is cocaine; I read and heard about it. It is dangerous stuff."
He said, "Oh, don't worry about that, this is not a serious matter."

Q. What else was said at that time?

A. After this conversation, then he took two small pieces of paper,
which were samples, and he gave them to him.

Q. To whom did he give the samples?

A. To my comparo, Centorino.

Q. How long was Nunzio there on this Friday that you have just told us about?

A. Well, talking there, I think about half an hour; probably a little more.

Q. During that time he was talking with Centorino?

A. Yes, between the time that he spoke to me, then he spoke to Centorino, I don't think it elapsed no more than half an hour.

Q. Did Centorino say anything about not wanting to have anything to do with this kind of business?

A. Yes, he argued and argued with him; he told him several times that he did not want to have anything to do with that stuff, but finally he convinced him that it was not anything serious.

[fol. 658] Q. Then after this, you told us that Andy gave Centorino two samples; is that correct?

A. Yes, sir.

Q. Was anything said after the samples were given as to when Andy would come back again with his friend who was to buy the stuff?

A. Yes, Saturday.

Q. At what time?

A. At seven o'clock.

Q. Did you see Andy and Pasquale Napolitano at two o'clock Saturday afternoon, the 14th?

A. No, it was in the evening at seven P. M.

Q. Were they in your house at all on Saturday the 14th, before seven o'clock?

A. No, they were not; a few minutes after seven, but not before seven.

Q. When they came to your house on Saturday night, who was there when they came in?

A. There was I and my wife.

Q. That is, you and your wife were at number 138 Union Street at about seven or a little after seven when Andy and Pasquale came in, is that correct?

A. Yes, sir.

Q. Now, will you please tell the Court and jury in your own way everything that happened from then until these two men went away?

A. Asked my comparo if that stuff was there.

Q. You told us a moment ago, Mr. Alba, that just you and your wife and Andy and Napolitano were there?

Mr. Brancato: If the Court please, I object to counsel almost telling the witness—

Mr. Price: May I finish my question?

Mr. Brancato: Let the witness finish out what he was going to say.

[fol. 659] By the Court:

Q. Had you finished your answer?

A. No, sir?

Q. Please finish your answer.

A. Nunzio was talking to my comparo, and he asked, "Did you bring the stuff?" He said, "No." He mentioned the one who is going to give it to me, he is going to bring it to me Monday.

By Mr. Price:

Q. What I am getting at——

Mr. Brancato: I object to what counsel is getting at. Don't tell the witness.

Mr. Price: May I not ask the question?

The Court: Ask the question directly, without any comment or reason.

Mr. Price: May I not ask a question without interruption? He won't even let me ask a question.

Mr. Brancato: I have a right to object at a certain time.

Mr. Price: Won't your Honor tell Mr. Brancato not to object until I complete my question?

The Court: Wait until the question is completed.

By Mr. Price:

Q. You testified here a minute ago when these two men, Nunzio and Napolitano came there, you were in the house alone with your wife; will you please tell me when your comparo, Centorino, came in?

A. I had not finished—my comparo was there also; he was present also.

[fol. 660] Q. Was your comparo there when the two men came in?

A. Yes, he was sitting here.

Q. On Saturday night around seven o'clock?

A. Yes, sir; Saturday night.

Q. Now, please tell us from there everything that happened?

A. They came in; they said, "Good evening"; then Andy asked my comparo, "Did you bring the stuff?" He said, "No, that a friend who was bringing that to me will not bring it before Monday." Then Andy said, "All right, show him the samples that I gave you. He will then see whether he likes them or not."

Q. That is, he said to Centorino?

A. Yes, sir.

Q. Where was the other man at that time, Pasquale?

A. He was standing there; standing up waiting.

Q. After that did Centorino give anything to Pasquale?

A. Yes, two samples that were wrapped up in a small piece of paper.

Q. After Centorino gave Pasquale the samples, what was said?

A. Then Pasquale pulled out another package (By the Interpreter). Indicating with his fingers two and a half inches long.

Q. Go ahead.

A. He opened that and started to examine it, both of them. Andy said, "Don't bother with that, the stuff there is better than what you have."

Q. Go ahead.

A. Pasquale turned over to Mr. Centorino and he said, "I would like to have ten ounces of it." Centorino answered, "Where am I to get it? The one that is to bring it to me will not bring it before Monday morning."

Q. Was there anything else said at that time?

A. That is all.

[fol. 661] Q. Now, after that was said, was an appointment made to come back again by Napolitano and Nunzio?

A. Yes, they were to return there on the Monday between seven and seven thirty P. M.

Q. Now, on Monday, did they come back to your house, yes or no?

A. Yes, they did, about seven or seven ten o'clock, I guess. It was around that.

Q. Monday I am talking about. What time did they get to your house, Andy and Pasquale?

A. Seven, seven five, I know it was after seven.

Q. Who was in your home when they got there on Monday?

A. Nobody else; only my wife and I; that is all.

Q. Well, now, when you and your wife were there on Monday night and Pasquale and Andy came in, wasn't Centorino there?

A. No, he was not.

Q. What did you do then when they came in?

A. Andy asked me, "Did your comparo come?" And I said, "No." Then he said to me, "Go and call your comparo."

Q. When he said that, did you go out?

A. Yes, he sent me over there; he sent me.

Q. Who sent you?

A. Andy—Nunzio.

Q. Now, when you went out, did Nunzio go out with you?

A. Yes, sir; he came out after me but he remained at the corner of Union Street and he bought cigars.

Q. Where did you go to?

A. I went to my comparo's house to call him, to tell him that those friends had arrived.

Q. Now, after you went to his house, did he return with you to 138 Union Street?

A. Who?

[fol. 662] Q. Centorino?

A. Yes, sir; he came to my house.

Q. When you and Centorino got back to 138 Union Street, who was in your house?

A. Nunzio and that man Napolitano.

Q. Now, will you please tell the Court and Jury everything that was said between you and Centorino, Nunzio and Pasquale, after you got back to your house on Monday night.

A. When Centorino came in he said, "Good evening." They answered, "Good evening" and Nunzio asked him, "Did you bring the stuff?" Centorino answered, he said, "No, but I have it at home." Then Andy said, "Go and get it."

Q. Go ahead, tell us everything that happened at that time?

A. And my comparo said, "Come to the house, I will give it to you at the house"; then the four of us went out together, I, Centorino, Nunzio and Pasquale, to Centorino's house. When we had walked about ten paces away from my house, all of a sudden that man, (Indicating the name of Pasquale) stopped. He said, "No," pulled out a roll of bills out of his pocket and said, "I have a lot of money here. I will not take any chance of going to any other place. If you want to bring the stuff, bring it here."

Q. Go ahead?

A. Then again the four of us returned into my house.

Q. When you four got back into the house, what happened?

A. Andy said, "Go and get it," and my comparo went. I don't know, the time having elapsed, half an hour or probably less, then he returned with the stuff.

Q. When he went out to get the stuff, did anybody go with him?
[fol. 663] A. Only he went there alone.

Q. About half an hour later when he came back, as you said, with the stuff, did Centorino have anything with him?

A. No, sir. (The answer "No, sir" was by the witness in English.)
(By the interpreter) He came there with four.

Q. You say that he came there with four, who was with him when he came back?

A. Mr. Pace, Agnello, Frankie (indicating Frank Agnello with his finger) and Centorino himself, the four of them.

Q. Now, when the four came in, did Centorino speak to you?

A. Yes, sir.

Q. And at the time that the four came in, Pasquale and Nunzio were there, correct?

A. Yes, sir.

Q. Which room were they in, Pasquale and Nunzio?

A. In the first room, in the kitchen.

Q. When the defendants, Pace, Agnello, Frank Agnello and Centorino came in, what did Centorino say to you about Pace and Thomas Agnello, if anything?

Mr. Brancato: Let him state what he said, if the Court please.

Mr. Price: I press the question.

The Court: Objection overruled.

A. Then he said, "Comparo, I brought the friends."

By Mr. Price:

Q. When he said that, what did you do?

A. I walked into the room where I kept the pastry and lit the gas.
[fol. 664] Q. What room was that?

A. The second room.

Q. Will you please indicate on the photograph which of these two rooms it was, the room "A" or the room "B"?

A. (By the Interpreter.) In the—indicating room marked letter "B" on the window.

Q. When you went in there and lit the gas, will you describe to the jury what happened?

A. As I have lit the gas, and I was about to place the box of tironne or pastry on the table, all of a sudden I heard a shot and then a noise and they were all jumping on us.

Q. Up to that time that the shot was fired and the noise that you heard and they all jumped in on you, as you have described, had you spoken one word about cocaine at that very moment, after the four defendants came in to your home?

A. No, sir; I did not know them. I only knew them. I only knew my comparo there, that is all.

Q. What did you do with the box of tironne or pastry that you had?

A. It remained there on the table.

Q. Now, before the shot was fired, showing you defendant's exhibit A and directing your attention to the little hole in the window, was that hole in the window before the shot was fired?

A. No, sir.

Q. Was this glass, showing the witness defendant's Exhibit B, marked with the letter "G," broken there that night?

A. No, sir; it was a long time ago.

Q. What was the only glass broken in that window that night?

A. (By the Interpreter.) Indicating the pane of glass above the one that the hole appears on, or the upper window.

[fol. 665] Q. You just testified a minute ago that this window with the letter "G," that was not broken at all. Is that correct?

A. I mean that this one on the bottom (indicating with his finger) on the bottom where the hole is on there. That was never broken, the one above it.

Q. You have got it wrong, Mr. Interpreter.

Mr. Brancato: I object to counsel making any statements.

The Court: Put the question to the witness.

By Mr. Price:

Q. Now, I asked you a question a minute ago and you testified that the window with the letter "G" was never broken at all that night, did you?

Mr. Brancato: I object to the question.

The Court: Objection sustained. Put the question to the witness without any reference to his previous testimony.

Mr. Price: I except.

The Court: Proceed.

By Mr. Price:

Q. Was the glass with the letter "G" broken there that night at all?

Mr. Brancato: I object to it as leading.

The Court: Objection overruled.

A. (By the Interpreter.) He is now indicating the upper window of the left hand side by looking at the picture where that line is there. That had been broken for some time.

[fol. 666] By Mr. Price:

Q. I am not asking you that. You see the hole in the bottom window?

A. Yes.

Q. Was that hole in the window before the shot was fired?

A. No, sir.

Q. Was it there after the shot was fired?

A. Yes, sir.

Q. Was the window right above it with the letter "G" broken that night?

A. No. The one on the other side was broken.

A. All right.

A. (Continuing:) Which is broken.

Q. Was the paper on the window at the time the shots were fired—the shot was fired?

A. Yes, sir.

Q. Now, when the officers came in, was there anything on the table other than the pastry?

A. No, sir; nothing else; no, there was only a small box over there, this tirrone.

Q. Were any blue packages on the table at the time the officers came in?

A. No, sir; nothing.

Q. Will you please tell us everything that happened when the officers came in, including where Andy was, where Pasquale was and where all of the defendants were?

A. Pasquale and Andy were in the first room in the kitchen and we were in the second room, where we left them, and they ordered us to put our hands up, to all of us. Then they searched through the entire house, under the bed, all around, and then after they had made a search of the house, then they came back and said, "Put your hands up again." Then they searched us again and in Frank's pocket (By the Interpreter: Indicating the boy's, he says) they [fol. 667] found some blue packages. I don't know what the contents is or not; I don't know.

Q. Were there any blue packages found in any other place in the house, other than the person of the defendant Frank Agnello?

A. No, sir; no other place else, only on the boy, that is all.

Q. How many times were you searched?

A. Three times I was searched.

Q. When they searched you the first two times, was anything found on you?

A. Nothing.

Q. Now, when they searched you the third time, did they find Government's Exhibit 10, this roll of bills, on your person?

A. It was rolled, and there was a band on it. There was an elastic band.

Q. Was that found on you?

A. Yes, as I was that way, as I was going to put my hands on my pocket, then he pulled this out.

Q. Did you ever have it in your possession? (Referring to Government's Exhibit 10.)

A. I did not even know what the amount was in that.

Q. Who was the man who searched you. This officer? (Indicating Officer Manning.)

A. Yes, sir.

Q. Indicating Coleman Manning?

A. I don't know what his name is.

Q. After searching you, did you tell him that the money did not belong to you; that you never had it in your possession?

Mr. Brancato: I object to that as a leading question.

The Court: Objection overruled.

A. I told him that my property consisted of only four dollars [fol. 668] and this did not belong to me. I did not know the amount of it and I did not know nothing about it. He knew how much was there.

By Mr. Price:

Q. Did they take any of the other men, Thomas Agnello or Frank Agnello or Pace out of the room "B" which you were in, into any other room?

A. No, sir; we all of us remained there from the time that they entered till we went out.

Q. Did they go through the ceremony of arresting Andy, who was there at that time?

A. Yes, they made out some kind of a ceremony up there, and they just pushed him on a chair and they said, "Sit down there."

Q. Did Centorino say to Pasquale or Nunzio "This is my partner" (indicating the defendant Pace) and then did Pace say, "Are you ready to do business?"

A. No, sir.

Q. Or did Centorino say to Pace, "There are the men that want to buy the coke" or any such conversation as that?

A. No, sir.

Q. Did Frank Agnello take any packages out of his pocket and hand them to Thomas Agnello and did Thomas Agnello place them on the table?

A. No, they—

Mr. Brancato: Have it noted that before the interpreter began interpreting the question, the witness answered.

Mr. Price: He did not do any such thing at all.

Mr. Brancato: He certainly did.

Mr. Price: I submit that we get an answer to the question. [fol. 669] The Court: Very well; let the witness answer the question.

A. No, sir; it remained there in his pocket.

By Mr. Price:

Q. Did Thomas Agnello say one word in your house, the night that he was arrested, up to the time that he was arrested?

A. No, sir.

Q. Did Pace say anything up to the time that he was arrested?

A. No, sir.

Q. Did Frank Agnello say anything up to the time that he was arrested?

A. Nothing at all.

Q. After he was arrested, did Frank Agnello say he was getting five dollars from a man to bring the packages up to your home?

A. Yes, I heard something about that; him say that a man gave them to me to bring them over here.

Q. Did he use the words "five dollars"?

A. Yes, I believe he did but don't remember exactly.

Q. Did Thomas Agnello say to either Manning or Ralph Oyler there that night, "I will give you two thousand dollars if you will allow my brother to go, let me go and let Pace go"?

Mr. Brancato: I object to that question, unless he heard it.

The Court: Oh, yes, that is all he can testify to.

Mr. Price: I am asking him if he said it.

Mr. Brancato: The evidence is that this conversation took place in a privte room.

Mr. Price: He says they were not in a private room.

The Court: Ask him if he heard that conversation.

[fol. 670] Mr. Price: I press my question.

The Court: Objection overruled.

A. No, sir; I did not hear; I cannot say. There was no word of that kind.

By Mr. Price:

Q. Have you ever been convicted of a crime, Alba?

A. No, sir.

Mr. Price: Your witness.

Cross-examination by Mr. Brancato:

Q. I think you said, Mr. Alba, in answer to your attorney's questions on direct examination, that you told Nunzio or said to Nunzio these words, "I don't deal in that kind of stuff," is that true?

A. I don't know.

Q. You don't know it or what?

A. Yes, of that stuff, I told him. All I know is how to make pastry. I don't know anything about that stuff.

Q. Now, that is true? You want this jury to understand you to say that you don't know any thing about cocaine; is that right?

A. No, sir; I don't know anything about that stuff; I don't even know what it is.

Mr. Brancato: Call Inspector Fleming, please. Have him come up here. The Customs Inspector.

By Mr. Brancato:

Q. You are now in the business of making sweetmeats, is that right?

A. Pastry, yes; sweet stuff.

Q. Several years ago were you in the laundry business?

A. Yes, about two or three years ago.

[fol. 671] Q. Yes, and you used to have work on ships; as a laundryman, didn't you?

A. Yes, sir; several steamers; also sold them pastry.

Q. You had some work on the steamship Duc d'Aosta, about two years ago, didn't you?

A. St. Georgia.

By the Court:

Q. Before this occurrence which resulted in the arrest of you men had you ever heard the word cocaine?

A. No, sir.

By Mr. Brancato:

Q. Now, do you remember the 17th day of May, 1920; do you recall that day to your mind?

A. Yes, sir.

Q. At that time you were over at Pier 95, 45th Street and the Hudson River, weren't you?

A. Yes.

Q. You were coming out from the dock on Pier 95, from a ship that was anchored there, didn't you?

A. I don't remember.

Q. You were coming up from the dock on Pier 95, from a ship that was anchored there, didn't you?

A. I don't remember.

Q. You were coming up from the dock, going away?

A. I don't remember whether the steamer was anchored there or going out.

Q. Oh, I see. But you remember the fact that you were coming up from the dock, away from the steamer, toward the street?

A. Yes.

Q. You had a coat over your arm, didn't you?

A. I don't remember.

Q. Do you remember meeting this man, Fleming, Inspector Fleming, [fol. 672] ing, the Customs Inspector? (Indicating.) Do you know him?

A. No, I don't remember him.

The Court: Do you want to have him in the Court Room or remain outside.

A. Yes, I remember him now.

By Mr. Brancato:

Q. That is the man that searched you coming off the dock, isn't it?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: I except.

The Court: I think he had better wait outside.

Mr. Brancato: Yes.

A. Yes, I believe it is him.

By Mr. Brancato:

Q. That is the man that searched you?

A. Yes, sir.

Q. Where did he take you to search you first, in the Customs Guard House on the Pier?

A. I don't know where he brought me, I think in the office or some place.

Q. There was another inspector there who came, a man named Thompson?

A. I don't remember.

Q. Wasn't there another inspector?

A. There was more than one.

Q. Another Inspector who spoke to you in Italian?

A. I don't remember.

Q. The fact is that they searched you, didn't they?

A. I had nothing.

[fol. 673] Q. They searched you, didn't they?

A. Yes.

Q. Didn't they find hidden underneath your pants a quantity of cocaine?

A. No, sir; there was a package there that an officer had given me to bring outside. I did not know what was in it.

Q. That was an officer on the ship that was anchored there at Pier 95, wasn't it?

Mr. Price: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: I except.

A. I cannot read, I cannot write, I don't know what the contents of it was.

By Mr. Brancato:

Q. The inspectors told you that you were carrying cocaine, didn't they?

Mr. Price: I object to it as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: I except.

A. No, sir; I don't know whether it was cocaine or not, but this officer gave it to me and told me to bring it outside, to come outside and get it. He called me from the outside of the dock inside.

By the Court:

Q. One minute. That answer is not responsive. The question is whether the Inspector told you that you were carrying cocaine; didn't they tell you that?

A. They said so, but I don't know what it is.

[fol. 674] Q. Then you had heard the word "cocaine" before this occurrence?

A. Yes, I will say now that I did hear it but I never had any dealings with it. I don't know nothing about it.

By Mr. Brancato:

Q. So that when you told the Court and jury before that you told Nunzio that you had never heard, did not know anything about cocaine, you did not tell the truth, did you?

Mr. Price: I object to that.

The Court: Objection sustained.

Mr. Brancato: Well, if the Court please—

The Court: The jury has heard this testimony. Go right on, Mr. Brancato.

Mr. Brancato: All right.

By Mr. Brancato:

Q. Now, you say that Nunzio gave the two samples to Centorino on Friday, January 13th, is that right?

A. Yes, sir.

Q. Not on Saturday night?

A. No, not Saturday night; it was given on Friday.

Q. On Saturday night Centorino did not go with Nunzio in the little room of your premises, to have a private conversation while you and Napolitano remained in the kitchen?

Q. When, Saturday?

A. It was on Saturday—not Friday, that they went there to talk.

Mr. Brancato: That is all.

The Court: Is there any re-direct of this witness?

Mr. Price: That is all.

The Court: We will take a recess, gentlemen, until 2 o'clock.

(A recess was taken at this point until 2 P. M.)

[fol. 675]

After Recess

PHILIP LAGAMAN, called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your business?

A. Restaurant, 212 Columbia Street.

Q. Do you know the defendant Frank Agnello?

A. Yes, sir.

Q. Do you know other people that know him down in that neighborhood?

A. Yes, sir.

Q. Have you heard his reputation discussed among the neighbors down there for decency, honesty and uprightness?

A. Yes; I knew him for the last three years.

Q. What is his reputation for those qualities, good or bad?

A. I know him for a good boy, that is all.

Q. Is his reputation for those qualities good or bad?

A. What do you mean?

Q. You said that you had heard his reputation discussed?

A. Yes, a good boy.

Mr. Price: Yes, all right; that is all.

Cross-examination by Mr. Brancato:

Q. Do you understand the questions that counsel asked you?

A. Yes, sir.

Q. What did he ask you?

A. He asked me about his reputation.

Q. What did he ask?

Mr. Price: He has just answered, I submit.

[fol. 676] By Mr. Brancato:

Q. What is the question that counsel just asked you?

Mr. Price: I submit that he has already answered.

Mr. Brancato: I will withdraw the question for the present.

By Mr. Brancato:

Q. With what people have you spoken about Frank Agnello's reputation?

A. Well, in the neighborhood there, I just go in there—in his grocery store to buy stuff. He brings orders to my store.

Q. That is all that you know about him you buy something and he brings the orders to your store; that is all you know about him?

A. I see him around there in the house all the time.

Q. You see him around the house; anything else that you know about him?

A. That is all I know.

Q. He brings the orders into your store; you see him around the house, that is all that you know about him?

A. That I can tell about.

Q. Do you base your opinion as to his reputation upon the fact that he comes to your store with orders and you see him around the house? That is true, is it?

A. Yes.

Mr. Brancato: That is all.

Redirect examination by Mr. Price:

Q. You have spoken to other people about him, haven't you?

Mr. Brancato: I object. I withdraw my objection.

[fol. 677] The Court: This man is a character witness for Frank?

Mr. Price: Yes, sir.

Mr. Brancato: It was answered before, if the Court please.

Mr. Price: All right; that is all.

The Court: If the objection is withdrawn, why doesn't he answer the question now.

Mr. Brancato: Yes.

Mr. Price: Mr. Brancato says it was answered before. If he concedes it was, I am satisfied.

Mr. Brancato: Then he said something——

Mr. Price: That is all.

The Court: That is all.

JACOB MEIZLEIK, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. Where is your place of business?

A. 39 Morrell Street.

Q. Is this card that I hold in my hand, your business card?

A. Yes, sir.

Q. Do you know the defendant, Antonio Centorino?

A. Yes, sir.

Q. How long have you known him?

A. About three years.

Q. Was he ever in your employ?

A. Yes, sir.

Q. What did he do for you?

A. Pressing.

Q. What is your business?

A. Knee pants.

Q. That is, boys pants?

A. Boys' pants, children's.

Q. Is he in your employ now?

A. Yes, sir.

[fol. 678] Q. During the months of December, January, February, did he work for you?

A. Very little.

Q. Did you have a fire at your place?

A. Yes, sir, we had a fire.

Q. And during that time he did not work for you?

A. Whenever I had a little work, he worked, but not much business of late.

Q. Do you know other people that know him?

A. Yes, sir.

Q. Have you ever heard his reputation discussed for decency and honesty?

A. Yes, sir.

Q. What is his reputation as to that, good or bad?

A. Very nice.

Mr. Price: That is all.

Cross-examination by Mr. Brancato:

Q. When did you hear his reputation discussed?

A. In the union.

Q. I say, when did you hear his reputation discussed?

A. After this accident.

Q. After what accident?

A. This here trouble what he came in.

Q. I see. That is the only time you ever heard him discussed, is it?

A. Yes, sir.

Q. Whom did you hear discuss it?

A. People at meetings in the union, they started in to speak of him; that he is in trouble like this, so people said he is an honest man.

Q. Who are the people?

A. The union people, his employees brothers, whatever they call them, union brothers. They said they are very sorry that he came into trouble like that; they think that he is an honest man. That is all that I heard.

Q. Who are these people that said that?

A. I don't know their names exactly; it was a meeting.

[fol. 679] Q. Some people at a meeting and you heard this discussed; is that it?

A. Yes, sir.

Q. You paid particular attention to the discussion did you?

A. Not exactly, I heard that. I was sitting around there and they were talking.

Q. They were talking about him?

A. Yes, sir.

Q. They said, "He is an honest man"; is that right?

A. Yes, sir.

Q. That he was a man that would not break the law?

A. They did not say anything about breaking the law. They just said, they never believed him doing anything like that.

Q. They said they thought it was tough luck; that he was a good——

Mr. Price: I submit that this is improper and I object to it.
The Court: Objection overruled.

Mr. Price: I except.

(The last question was repeated by the reporter.)

A. I did not hear anything mentioned like that.

By Mr. Brancato:

Q. All you heard mentioned was that he was a very good boy?

A. Not exactly, not in those words.

Q. Just in what way?

A. I said before that they said they could not believe that a man like that should fall into trouble in this way, trouble of that kind.

Q. How long have you known him?

A. About three years.

Q. He has worked for you on and off?

A. No, he works steady; he has worked in my place steady. In [fol. 680] fact when we moved or we were fixing a new place, he helped us doing things in the shop we had there. I would not say exactly every day but he was there the second or third day, whatever it is, during the week, looking to see if we would start in.

Q. What meeting is this that you speak of?

A. There was a meeting; they were fighting for higher pay because——

Q. Are you an employer or an employee?

A. I am the boss in there; they are my employees.

Q. You are the boss and they are your employees?

A. Yes, sir.

Q. The employees were having a meeting?

A. Why, usually I came in that Union to fight for my work, so therefore we had a meeting.

Q. You were at the employers' meeting?

A. Yes, employers' meeting.

Q. Employers' meeting?

A. Employers' meeting.

Q. There were employers there too?

A. I said I employed people; I am not a lawyer, I cannot pronounce every word; I am not well known in the English language, and you can make it—I was there but I say they are employees, people that work for me, and there were others there.

Q. The people that work for you were having a meeting?

A. Yes, sir; and others, too.

Q. Who are the others?

A. They belong to the Union.

Q. Are they employers, people for whom others work or were they employees?

A. No, they employ, they work for somebody else.

Q. You were the only employer, the only boss at this meeting?

A. I was called in that time. There are others standing outside.

Q. Were there any other employers at that meeting?

A. Yes, sir.

[fol. 681] Q. You were having a meeting together?

A. No, we did not have a meeting together; there is what is called by the name of adjustment board. If you want me to explain the whole meeting I will explain it.

Q. The fact is that you were there to attend some meeting?

A. Yes, sir.

Q. At this same meeting you don't know who was there, but somebody spoke about this fellow being a good boy, is that right?

A. Yes, sir.

Mr. Brancato: That is all.

Redirect examination by Mr. Price:

Q. During the three years you have known him, have you ever heard anybody else say anything against his reputation or character?

A. No, sir.

Mr. Price: That is all.

Recross-examination by Mr. Brancato:

Q. During those three years, have you inquired about anybody speaking against him?

A. I did not feel it necessary.

Q. You did not inquire, did you?

A. Because the Union—

Q. You did not inquire, did you?

A. No, sir; I did not.

Re-redirect examination by Mr. Price:

Q. While he worked for you, you always found him to be decent and honest?

Mr. Brancato: I object.

The Court: It may be answered.

A. Yes.

The Court: Are there any more character witnesses?

[fol. 682] Mr. Price: This is not a character witness, the one I am calling.

The Court: How many witnesses on the facts?

Mr. Kesselman: Three more.

The Court: That includes the testimony of all the defendants, three more witnesses?

Mr. Price: We will be through very shortly now.

JAMES FERRENTINO, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your business?

A. I am a shirtwaist cutter.

Q. By whom are you employed?

A. Well, I was employed by the E. & H. Waist Company.

Q. Are you employed now?

A. No, sir.

Q. How long have you been out of employment?

A. About a month.

Q. Do you know Thomas Agnello?

A. Yes, sir.

Q. Do you know James Pace?

A. Yes, sir.

Q. Do you know Frank Agnello?

A. Yes, sir.

Q. Do you know Antonio Centorino?

A. Well, I know him by sight.

Q. Were you in the neighborhood of the store, 167 Columbia Street, on the night of January 16th?

A. Yes, sir.

Q. Did you at that time see any of the defendants?

A. Well, I seen Frank.

Q. Where did you first see Frank that night?

A. I seen him on Degraw Street.

[fol. 683] Q. Which direction was he going on Degraw Street?

A. Up towards Court Street.

Q. That would be up towards—from what street was he going?

A. I met him right near the Church, between Hicks Street and Columbia Street.

Q. He was going up Degraw Street?

A. Yes, sir.

Q. Towards Hicks Street?

A. Yes, sir.

Q. Did you speak to him?

A. Well, naturally I said "Hello." I said, "Where are you going?"

Q. What did he say?

A. He said, "I am going as far as Union Street," that is all.

Q. Where did you go from there?

A. Me?

Q. Yes.

A. I went straight down.

Q. Straight down where?

A. Down Degraw Street.

Q. To what other street?

A. Well, I went in the cigar store and bought a package of cigarettes.

Q. Where was the cigar store where you bought the cigarettes?
A. On Degraw Street.

Q. And from there where did you go?

A. Well, I turned around into Columbia Street and I met Tom as they were passing by—Thomas, James Pace and that other man there.

Q. This man with the mustache, Centorino?

A. Yes, sir.

Q. Did you hear any conversation between Thomas, James Pace and Centorino, when you saw them on Columbia Street?

A. No, sir.

Q. Did you hear Tom say anything as to where he was going?

Mr. Brancato: I object to that as leading, if the Court please. He said he heard no conversation between them.

[fol. 684] The Court: Did you hear Tom say anything at all?

A. No, Tom called me back and said to me, "If you see Benny, tell him I am gone to the club."

By Mr. Price:

Q. That is the only thing?

A. Yes, sir.

Q. You did not hear him say anything to Pace or to the other gentleman?

A. No, sir.

Q. Who is Benny?

A. Benny Morino, a friend.

Q. That is all that you know about it?

A. Yes, sir.

Mr. Price: Your witness.

Cross-examination by Brancato:

Q. Where do you live?

A. 97 Harrison Street.

Q. How far is 97 Harrison Street from 167 Columbia Street?

A. Well, I should judge about a block.

Q. So that you know these defendants well?

A. Oh, yes; Tom and Frank and Pace, I know.

Q. Tom and Frank and Pace you know? You have been quite chummy?

A. Tom used to work with me.

Q. I say, you are quite chummy with Tom?

A. Quite chummy? A. Friendly, yes.

Q. You are very friendly?

A. Well, not exactly very friendly. We know each other for years. He worked with me.

Q. Now, what was the first time that anybody spoke to you about this case?

A. The first day—the next day that they were arrested here.

Q. When did anybody speak to you about the case?

A. I spoke with his lawyer.

[fol. 685] Q. When?

A. Oh, about a week.

Q. A week ago?

A. No, about a week and a half ago.

Q. And before that time had you spoken to anybody about this case?

A. No, I did not.

Q. You never spoke to a soul?

A. No.

Q. About the case, until you went and saw Tom's lawyer?

A. Yes, sir.

Q. That is, Mr. Price or Mr. Kesselman?

A. Yes, sir.

Q. That was the first time that you mentioned anything about the case to anybody?

A. No, no, I spoke to his mother about it the following day. I told his mother all I knew about it the next day.

Q. You told his mother that?

A. Yes, sir.

Q. The next day?

A. Yes, sir.

Q. Where?

A. At 167 Columbia Street.

Q. What time of the day?

A. About—I think it was three o'clock.

Q. Three o'clock in the afternoon?

A. Yes, sir.

Q. Are you sure it was his mother?

A. Positively.

Q. Don't you know his mother was here about that time trying to bail her sons out, about three o'clock in the afternoon the next day?

A. I don't know.

Q. You don't know that?

A. No.

Q. What time of the day or night was it that you saw Frank as you have stated?

A. It was about ten after eight.

Q. Ten after eight?

A. Yes.

Q. Did you have a watch?

A. No, not exactly. Well, from eight to a quarter after eight, because there is a church bell there; I heard it strike a quarter after. I looked at my time—

[fol. 686] Q. You heard the clock in the church steeple strike a quarter after eight?

A. Yes, sir.

Q. It was before the clock struck a quarter after eight, did you say, that you saw Frank Agnello walking along Degraw Street?

A. Not before, no.

Q. When?

A. As I was walking down.

Q. As you were walking down?

A. I was right near the corner.

Q. Which corner was that?

A. Near Hicks Street.

Q. You were near Hicks Street when you saw Frank Agnello?

A. No, I did not see him from Hicks Street; when I got near—it is a dark street.

Q. Where were you the first time that you saw Frank Agnello that night of January 16th on Degraw Street?

A. I was near the church gate.

Q. How far is that from Columbia Street?

A. About three-quarters of a block.

Q. You were nearer to Hicks Street than Columbia when you first saw Frank, is that right?

A. I was near where?

Q. Near Hicks Street.

A. Yes, sir; it was about a quarter of a block away from.

Q. A quarter of a block away from Hicks Street where you were standing or you—

A. I was not standing; I was walking about my business.

Q. When you first spied Frank?

A. Yes, sir.

Q. That is true is it? How far away was Frank at that time?

Mr. Price: Away from what?

Mr. Brancato: Away from Frank.

A. He was coming up.

[fol. 687] By Mr. Brancato.

Q. How far away was he at the time that you first saw him. How far was he from you?

A. About five feet.

Q. He was coming up towards Hicks Street?

A. No, I was coming down Degraw Street from Clinton.

Q. From Clinton?

A. Yes, coming towards Columbia Street.

Q. What is the street after Columbia coming from Court? Isn't it Hicks Street?

A. No, it is a small street that they call Tiffany Place; then comes Hicks Street.

Q. It was between Hicks and Columbia Streets that you saw Frank, isn't that right?

A. Yes, sir.

Q. Between Hicks and Columbia Street; you were walking down toward Columbia?

A. Yes, sir.

Q. He was coming from Columbia Street towards Hicks Street?

A. Yes, sir.

Q. And you say that you were about five feet away from him when you first saw him?

A. Passing by.

Q. Passing by?

A. Yes, sir.

Q. Did you speak to him?

A. No, I said, "Hello." I asked him where he was going.

Q. What did you do?

A. I walked up, tending to my business.

Q. Were you walking fast?

A. No, not very fast.

Q. Taking your time?

A. Yes, sir.

Q. Did you meet anybody before you got to Columbia Street?

A. I stepped in to get a pack of cigarettes. As I was turning the corner—

Q. Now, wait a minute; you stopped to get a pack of cigarettes?

A. Yes, sir.

[fol. 688] Q. Is it a store on Degraw Street that you got your pack of cigarettes in?

A. Yes, on the same side I was walking.

Q. Were there people in there, customers?

A. A few people.

Q. A few people buying?

A. Yes, sir.

Q. They bought before you, did they?

A. No, I just went in and bought a pack of cigarettes.

Q. Did the man or the person who has that store wait on these other people first and then wait on you in turn?

A. No. These other people were talking in there.

Q. The man stopped talking and came to you?

A. No, he was not talking, the storekeeper, the storekeeper naturally asked me what I wanted. I said, "A pack of cigarettes."

Q. He took a package of cigarettes from the shelf and he gave them to you, did he?

A. Yes, sir.

Q. What kind of cigarettes were they?

A. Sweet Caporals.

Q. You paid him?

A. Yes, sir.

Q. With what; what did you give him?

A. A ten cent piece.

Q. Did he give you back any change?

A. No, sir.

Q. A ten cent pack?

A. Yes, sir.

Q. You lit a cigarette?

A. Yes, sir.

Q. You opened the pack in there and lit a cigarette; you were in no particular hurry, were you?

A. No.

Q. You were simply taking your time?

A. Not in a hurry. I opened the cigarettes, opened the package and took a cigarette, lit it and walked out.

[fol. 689] Q. And you kept on going again down Degraw Street toward Columbia? A. That is only a little distance away from the corner of Columbia.

Q. Why are you so anxious to tell me that it is only a little distance away; is it because you are going to meet Tom Agnello now?

A. No, not at all; never expected to meet him.

Q. But you expected to testify now about meeting him, didn't you?

Mr. Price: I submit that is improper and object to it.

The Court: Objection overruled.

By Mr. Brancato:

Q. When you got to the corner at Columbia and Degraw, Mr. Witness, where was your friend Agnello, Tom? A. They were simply passing by.

Q. Passing by where? A. Right as soon as I got — we met, you know, coming so—as I was turning.

Q. Simply met? A. Yes, sir; he said, "Hello," and I said, "Hello, Tom." He asked me, "If anybody wants me," he says, "I have gone to the club."

Q. When Frank was coming down Degraw Street or going up Degraw Street towards Hicks, as you have testified, did you see him with a package in his hands? A. No, sir.

Q. Are you sure about that? A. Positive.

Q. You noticed that he had no package in his hands, did you? A. He did not have any that I seen.

Q. You looked for a package? A. No, I did not look. That was none of my business.

Q. How was he dressed? A. How was he dressed? He had [fol. 690] an overcoat on. I did not look to see what kind of clothes he had on.

Q. Of course you have not talked this case over during this week, have you, about him having an overcoat on? A. No.

Q. You have not talked with anybody about not having a package in his hands, have you? A. No, I am just telling the truth, what I know; that is all.

Q. Did you see his pockets bulging? A. No, it was in the dark; it was in the dark.

Q. Then when you got to the corner you say that you met young Agnello, or Tom Agnello? A. Tom.

Q. The older fellow? A. Yes, sir.

Q. With Pace? A. With Pace and another man, sitting right down there. (Indicating.)

Q. Centorino? A. The man with the mustache.

Q. They were walking down Union Street? A. Yes, sir.

Q. He told you he was going to the club? A. Yes, sir.

Q. When was the first time that you heard about their being arrested? A. I heard it the following day.

Q. About what time? A. It was then—I think it was about eleven or twelve o'clock.

Q. In the morning? A. Yes, sir.

Q. Who told you? A. Naturally always hear—heard it through people talking about it.

Q. Who told you about it? A. We were in conversation, a bunch of fellows.

Q. Fellows that you hang out with? A. No, not that I hang out with. Friends, that's all.

Q. They were not working either, were they? A. Oh, I work though, don't worry.

[fol. 691] Q. Were you working on that day? A. No, not that day; no. I help my father. My father is in the express business.

Q. I thought you were a cutter? A. Then I am a cutter by trade, but the garment business is slow today.

Q. You are not a cutter and you are a cutter. A. I am.

Mr. Price: I object.

The Court: Objection sustained.

By Mr. Brancato:

Q. You are a cutter sometimes and sometimes you work for your father as an expressman? A. When there is business I work.

Q. During this month of January though, you were a cutter, you were working for your father as an expressman; is that right? A. Yes, sir.

Mr. Brancato: That's all.

Redirect examination by Mr. Price:

Q. You work when you get work? A. Yes, sir.

Q. You work at your trade when there is plenty of work? A. I always do; I expect to go to work next month.

JOSEPHINE TARODARO, called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. Where do you live? A. 147½ Columbia Street.

Q. Whom do you live with? A. My husband and children.

[fol. 692] Q. Talk out loudly; we cannot hear you down here. Your husband and children, you say? A. Yes, sir.

Q. Do you know Frank Agnello? A. Yes, sir.

Q. On the night of the 16th of January, were you in his mother's store at 167 Columbia Street? A. Yes, sir.

Q. Do you know Antonio Centorino sitting there with his hand up to his face? A. Yes, sir; I know him, the night he came in there.

Q. Did you hear any talk between Centorino and Frank Agnello?
A. Yes, sir.

Q. Please state to these gentlemen what you say and what was done, what you heard and what was done after this talk? A. At the time I went in the store to buy a can of milk.

Q. Speak louder. A. All right. At the time I went in the store to buy a can of milk, I was talking with the mother and Flory. Mr. Centorino came in and says, "Frank, will you do me a favor, will you bring this package for me on Union Street? I will make you a present." Frank says, "Yes," Frank went inside to put on his coat. At the time he went in to put on his coat, he walked as far as the icebox. Frank came out. He opened up the package—

Q. Who opened up the package? A. Mr. Centorino.

Q. What did he do with it after he opened it up? A. He opened it up. He put it in his coat pocket, in the inside pockets.

Q. What did he put in the inside pockets? A. Some blue packages.

Q. What did he tell Frank after that? A. He said, "You walk ahead up Union Street. I will be right after you." Frank went [fol. 693] away. He stood outside by the door and after five minutes Thomas Agnello came out and James Pace.

Q. Where were they at the time that they came out? A. In the back of the store, and he says, "Where are you going, Tom?" And he says, "I am going up to the club."

Q. What is that? A. Well, he told him, he walked up to Mr. Centorino, and he asked him, "Where are you going?" Tom said, "I am going to the club." He said, "All right, I will go with you."

Q. Then did you see them leave together, Centorino, Pace and Tom Agnello? A. The three of them went together.

Mr. Price: That is all.

、 Cross-examination by Mr. Brancato:

Q. Where do you live. A. 147½ Columbia Street.

Q. On what night was this, what date? A. July 16th, I think it was.

Q. What? A. July 16th.

Q. Where were you July 17th. A. Home.

Q. What date did you say? A. July 16th; it was in the night.

Q. This conversation that you have, that you have just described, that happened on July 16th? A. In the night.

Q. In the night time? A. Yes, sir.

Q. Are you sure about that? A. I ain't sure about the date, but I know it was July.

Q. The summertime, was it? A. Gee, I don't remember the month, because I don't remember good.

Q. What made you say— A. January 16th.

[fol. 694] Q. What is there about January or July that you cannot tell the date? A. Well, I will tell you, I cannot talk good in America.

Q. Oh, you are talking fine. What is the difference between July and January? A. Well, I don't know; there must be some difference.

Q. I see. The impression you had at first it was July 16th; is that right. I say, the impression that you had at first is that this thing happened on July 16th, is that right? A. I don't remember the month; I don't remember the date.

Q. You remember the day? A. The 16th.

Q. What is there about the 16th that you remember and you don't remember about the month? A. Because, I cannot remember about the month, because I have enough trouble of my own. I lost a baby last week. I don't remember anything.

Q. I am very sorry for you for having lost your baby. A. I cannot remember about the things.

Q. Now, Mrs. Tarodaro, you found it easier to remember the date than you did about the month, when this thing occurred; is that right? Do you understand my question? A. Yes, I do.

Q. Do you remember the 16th much easier than you did January? A. Yes, sir.

Q. What were you doing that night in Agnello's store? A. I went down to buy some milk, a can of condensed milk.

Q. You were talking to Mrs. Agnello there, weren't you? A. Yes, sir; her mother and the daughter.

Q. How long were you talking there? A. About a quarter of an hour.

[fol. 695] Q. During that quarter of an hour Frank was in the store, was he? A. Frank was in the store, was in the store fixing the cases of macaroni. Two other fellows came in.

Q. Who are the two other fellows? A. I don't know.

Q. Two men came in before, is that right? A. Yes, sir.

Q. Then later on Centorino came in the store? A. Later on Centorino came in the store.

Q. Where was Frank at the time that Centorino came in the store; what part of the store was he in? A. Down further from the door; he was fixing the macaroni in the case.

By the Court:

Q. Further from the door, you mean towards the back of the store? A. This door coming in the store, he was away in there.

By Mr. Brancato:

Q. There is a door as you enter the store? A. There is a door as you enter the store, as I enter the store.

Q. That is the back of the store, there is a door which leads into the rooms behind the store, the living room? A. Frank was in the store; not in back of the store.

Q. Was he nearer the back of the store than he was to the front of the store when Centorino came in? A. As far as the counter.

Q. Where were you standing? A. Near the counter.

Q. Centorino came in and said, "Do me a favor, carry this pack-

age up to——" A. He says, "Will you do me a favor? Will you bring this package for me into Union Street."

[fol. 696] Q. Did he give the number? A. No.

Q. He did not say the number? A. I did not hear no number.

Q. He said, "Will you carry this package up to Union Street?"

A. "Will you carry this package up to Union Street?"

Q. You remember that distinctly? A. I remember that.

Q. No question about that in your mind; you heard that? A. That is what I heard.

Q. Frank said, "Sure, I will"? A. Yes.

Q. He went into the back of the store? A. To put his coat on; he came out.

Q. Did he go back of the store into the living room? A. In the living rooms.

Q. How many living rooms are there in there, do you know? A. Two rooms.

Q. You are friendly with the people there, with the Agnellos, aren't you? A. How am I?

Q. You are friendly with them, aren't you? A. I go in and buy only.

Q. Were you ever in the back rooms? A. No, sir.

Q. How do you know that there are two living rooms? A. Because the mother, she is—she is living in the rooms; she is so tight. That is how I know it.

Q. Frank went back there and put on his overcoat? A. Frank went back there and put on his overcoat and came out.

Q. How long did it take him before he went back to the room for his overcoat and came back? How long did it take him altogether? A. I don't know. He just went in and got his coat and put it on.

[fol. 697] Q. How long did you say it took, half an hour?

A. About a minute.

Q. During that minute Centorino opened the package?

A. Walked in as far as where Frank was—there was an ice box in that store. He put the package on the ice box and while Frank was coming out, he opened up the package.

Q. When he opened up this package, you say that he opened it up on the ice box?

A. On top of the ice box.

Q. This ice box is where in the store?

A. In the store.

Q. What part?

A. It is a small store, only from here to there; as far as over there.

Mr. Kesselman: Indicate for the record how large.

Mr. Brancato: About ten feet?

A. Then after Frank came out, he opened up the package.

Q. When Centorino opened up the package, was Frank there?

A. Right in front of him.

Q. Frank was there?

A. Yes, sir.

Q. He opened up the package in front of him?

A. He was opening up the package while Frank came out with his coat.

Q. You saw the package?

A. I was right near the counter.

Q. You saw it wrapped up in what kind of paper?

A. I think it was newspaper.

Q. You think it was.

A. I am not sure about the paper from the outside, but I think it was something like newspaper.

Q. Of course, you have spoken about this thing with Frank and Tom Agnello, haven't you?

A. No, sir.

[fol. 698] Q. Who asked you to come here?

A. Myself. I happened to go in the next morning, in the store, to buy milk—

Q. I am asking you who asked you to come here in Court?

A. I heard this trial was coming and I thought I would be a witness.

Q. You did not receive a subpoena, did you? Do you know what a subpoena is?

A. I don't know what you mean.

Q. Did you get a paper to come here?

A. No.

Q. You came here of your own free will?

A. I say I was down to the store the next morning. His mother told me the boy was arrested and in case there was anything I would be a witness myself that he came in and called him.

Q. Then you came here today, did you? Were you here yesterday?

A. Yes, sir.

The Court: Not yesterday?

The Witness: Not in here.

The Court: Friday.

Mr. Brancato: She said she was here. I don't know, your Honor. I would like to find out.

A. You do not give me time; you pick on me right away.

By Mr. Brancato:

Q. Were you here yesterday?

A. No, sir.

Q. Then you were here Friday?

A. Yes, sir.

Q. Were you here Thursday?

A. No, sir.

Q. Friday is the first day that you came here?

A. Yes, sir.

Q. And you came here of your own free will; nobody told you to come here?

A. Nobody.

Q. Nobody told you the case was going on?

A. The mother told me the case was going on.

[fol. 699] Q. Did she ask you to come here?

A. She didn't tell me to come here.

Q. Why do you say—

A. She told me the case was going on. In case they would call me, I would come of my own will.

Q. To do what?

A. To say what I saw.

Q. Saw what?

A. That Mr. Centorino came in there and called Frank.

Q. Who told you that what Mr. Centorino told Frank was important in this case; did anybody tell you?

A. About what?

Q. What you say, about what you said? Did anybody tell you that what you say now, that Mr. Centorino told Frank that on the night of January 6th, was going to be an important part of this case; who told you that?

A. Nobody told me that. I was in the store that night.

Mr. Brancato: That is all.

The Court: That is all.

FRANK AGNELLO, called as a witness on behalf on the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. How old are you?

A. Eighteen.

Q. Where do you live?

A. 167 Columbia Street.

Q. Do you know Antonio Centorino?

A. I do.

Q. James Pace?

A. Yes, sir.

Q. You know Thomas Agnello, your brother?

A. Yes, sir.

Q. You know the defendant Alba?

A. On the night of the 16th, that is the only time I see him.

[fol. 700] Q. Did you know him before the 16th of January?

A. Never.

Q. You have seen him a number of times since?

A. No, sir.

Q. I say, you have seen him a number of times since, haven't you?

A. Since when?

Q. Since the 16th of January after you were all arrested together?

A. Yes, sir.

Q. Where were you born?

A. Here.

Q. Brooklyn?

A. Yes, sir.

Q. You have lived in Brooklyn all your life?

A. Yes, sir.

Q. Have you ever been convicted of a crime?

A. No, sir.

Q. Do you remember the night of the 16th of January, 1922, of this year?

A. I do, yes, sir.

Q. Just a little over two months ago?

A. Yes, sir.

Q. Did you know Centorino before that time?

A. I did.

Q. Had you ever spoken to him at any time in your life about cocaine? About selling cocaine?

A. No, sir.

Q. Did you ever have any conversation with Alba about selling cocaine?

A. No, sir.

Q. Did you carry some blue packages from your mother's from the store at 167 Columbia Street for Centorino?

A. I did.

Q. Will you please tell his Honor, the Judge, and the gentlemen of the jury, how you came to carry those packages? Sit back, take your time and talk slow.

A. I was doing some work for my mother in the evening—

Q. Where?

A. In the store. Fixing the macaroni and cans of tomatoes. Mr. Centorino came in with a package under his arm. He says, "Frank, [fol. 701] will you do me a favor?" I said, "What is it?" He said, "Take this package for me to 138 Union Street."

By the Court:

Q. Show the jury how big the package was?

A. About that long and that high. (Indicating).

Q. How much did it weigh?

A. Very light. So I told him, "Where is it?" He said, "Union Street, 138." He said "There is a stable right next to it." So I said "All right," and he said, "Get your coat." I went in the back room and got my coat.

By Mr. Price:

Q. When you say that you got your coat, do you mean your overcoat?

A. My overcoat.

Q. Go ahead?

A. Coming out Centorino had this package on the ice box, all broken.

Q. What do you mean "all broken," opening it?

A. The package was open, the string on it, he broke the string and there was blue packages in there. He started to put them in my pocket. I helped him. He said, "You wait across the street

from 138." He said, "I will be over in a few minutes." So I left the store and went along Columbia Street——

Q. Let me interrupt you; when he put these packages in your pocket, did you look at the packages first or did he put them right in your pocket?

A. As soon as he opened them, then he put them in my pockets.

Q. That is, in your coat pockets?

A. Coat and pants pockets.

Q. Did he tell you what was in the packages?

A. No, sir.

[fol. 702] Q. Did you know the packages contained narcotics?

A. No, sir.

Q. Or cocaine?

A. No, sir.

Q. Would you have carried those packages for him had you known that they contained cocaine or narcotics?

A. Never, no, sir.

Q. Did you ever know that Centorino was going up to 138 Union Street for the purpose of selling narcotics, which he gave you to deliver there?

A. No, sir.

Q. Would you have gone in that house that night had you known it?

A. No, sir.

Q. Will you tell the Court and jury, after you left your mother's home where you went to?

A. I went along Columbia Street up Degraw to Hicks, then I went along Hicks——

Q. Let me interrupt you; it has been testified to by some of the witnesses for the Government, that you walked with your brother Thomas and Pace and Centorino up to 138 Union Street; is that the fact?

A. No, sir; I left alone.

Q. You say that you walked from Columbia to Degraw? Tell us which way you went?

A. I went up Degraw to Hicks, along Hicks to Union, and down to 138, and waited across the way.

Q. Did you see the man who testified here today?

A. I did.

Q. Did you meet him at all that night?

A. I met him on—near Degraw and Hicks.

Q. Is there a church on Degraw Street near Hicks Street?

A. There is.

Q. That is, it occupies the entire block, does it not, from Tiffany Place to Hicks Street?

A. Well, half of the block.

Q. The other half is the church yard, isn't it?

A. Yes, sir.

[fol. 703] Q. And at the time that you met the man who testified here today, Ferrentino, where did you see him?

A. I seen him near the church.

Q. Near the church?

A. Yes, sir.

Q. Ferrentino?

A. Yes, Jim.

Q. When you stood opposite 138 Union Street, what did you see, if anything?

A. Waiting there for about five or six or seven minutes, I saw Centorino with my brother Tom, James Pace, and then I saw my brother look over——

Q. Where did you see them at that time?

A. I seen them across the street; they were on the same side as 138 Union Street.

Q. In front of 138?

A. They were walking.

Q. Walking in which direction?

A. Walking towards Court Street.

Q. When you saw them, what would they do?

A. They spied me on the other side and he spoke to Centorino and Centorino called me over.

Q. Now, when you got over there, did you hear any conversation between Centorino and your brother Thomas, and Pace?

A. Yes, sir.

Q. What was that conversation please?

A. Well, when I went there my brother told me, "What are you doing here?" Centorino says, "He is on an errand for me." So my brother said, "Send him home; he is busy home." So Centorino says, "It is only for a few minutes. I will send him right home." So my brother was walking away when Centorino called him and said, "Come in and have some pastry."

Q. Who was with your brother at that time?

A. James Pace.

Q. Go ahead.

A. He told him the second time to have some pastry. My brother refused. Then the third time, my brother consented to have some [fol. 704] pastry. So we walked in together, the four of us. Centorino walked in first. I followed, James Pace and my brother after me.

Q. Up to that time had you heard any discussion about the sale of narcotics?

A. No, sir.

Q. When you got inside, will you please tell us what happened?

A. Centorino went in; he says to Alba, he says, "Here is some friends of mine; get him some pastry."

Q. To whom did he refer, if you know?

A. He said it to Alba.

Q. Who was he talking to, when he said, "This is some friend of mine."

Mr. Brancato: I object to that as calling for a conclusion.

The Court: Objection overruled.

A. He was talking to us, he meant my brother Thomas, Pace and myself.

By Mr. Price:

Q. What did Alba say or do?

A. He said, "Sure, come on in," so he was taking us in the other room.

Q. When you say the other room, what room were you in when Centorino said that?

A. We were in the kitchen when we went in.

Q. This room indicated on Defendant's Exhibit A, under the letter "A," is that right?

A. That is, as soon as we went in, we went in to "A."

Q. You say you went into the other room; you went into the room "B"?

A. Yes, sir, he called us into the room "B."

Q. What did he say when you went into the room "B"?

A. We went into room "B." He struck a match and lit the gas [fol. 705] and as soon as he lighted the gas a shot was fired. Then the men came in with revolvers in their hands and told us "Hands up."

Q. Now, up to that time had you taken any of the packages out of your pocket?

A. No, sir.

Q. Had one word been spoken between Nunzio and Pasquale and Centorino and Alba or any of the men about narcotics?

A. No, sir.

Q. Did you see those men there when you got in?

A. Yes, I seen them in room "A." I seen Napolitano and the other, Nunzio.

Q. What were they doing in room "A"?

A. They were sitting down near the table with Alba's wife.

Q. When the shot was fired and they all rushed in, what was done?

A. They started to search us; they found the packages on me. They said, "Where did you get these?"

Q. Who said that to you?

A. I think it was Manning. I said, "A man"; as soon as I said, "A man," he struck me.

Q. What did he strike you with?

A. With his fist.

Q. Did you say a man gave them to you to bring them and he promised you five dollars for it?

A. No, sir.

Q. While you were there did they take your brother Thomas out of the room at all?

A. No, sir.

Q. Did they take Pace out of the room?

A. No, sir.

Q. Did they take Alba out of the room?

A. No, sir.

Q. Did they go through the ceremony of arresting Nunzio?

A. Yes, about five minutes after we were against the wall, Manning [fol. 706] shoved Nunzio with his fist against his stomach and said, "Sit down."

Q. You say that you were all together in the same room at all times, up to the time that you were taken away; is that right?

A. Yes, sir.

Q. Did Tommy offer Oyler or Manning two thousand dollars to let you or Pace go?

A. No, sir.

Q. Did Tommy or Pace say one word or did you say a word up to the time the shot was fired?

A. No, sir, we did not.

Q. You did not make any statements after the shot was fired, other than you have testified to here?

A. That is all.

Q. Did Pace say anything to any of the officers?

A. No, sir.

Q. Did Thomas say anything to any of the officers?

A. No, sir.

Q. You saw Mr. Alba there?

A. Yes, sir.

Q. Was any money passed to Mr. Alba by Pasquale Napolitano or by Nunzio?

A. Well——

Q. Was there any money passed between either Pasquale or Nunzio to Alba?

Mr. Brancato: I object to the form of the question. Ask him if he saw any money passed.

By Mr. Price:

Q. You saw everything that happened?

Mr. Brancato: I object to that, if the Court please.

A. Yes, sir.

The Court: It is leading. He said, "Yes." Let the answer stand.

[fol. 707] By Mr. Price:

Q. Did you see Nunzio or did you see Pasquale give any money to Alba while you were there?

A. No, sir.

Q. Did he give any money to Alba while you were there?

A. No, sir.

Q. Was he in the same room with Alba while you were there?

A. Napolitano, you mean?

Q. Yes?

A. No, he was in room "A."

Q. Did you see how Manning got the money from Alba?

A. Yes, sir.

Q. Tell the jury how he got it?

A. While Mr. Alba was sitting on a trunk with me, when Manning said "Get up." In his hand he had a roll of bills. He stuck his hand into the pocket and took out the roll of bills. The old man started to holler, "That ain't my money," so Manning said to James Pace, "Tell that grease-ball to keep quiet; I am only kidding."

Q. You have told us everything conversation that took place in that room?

A. Yes, sir.

Q. You are sure none of the other conversation took place?

A. Yes, sir.

Q. That I have asked you about?

A. Yes, sir.

Mr. Price: That is all.

Cross-examination by Mr. Brancato:

Q. He said, "Tell that grease-ball to keep quiet," did he?

A. Yes, sir.

Q. You were asked, would you have carried those packages if you knew that they contained narcotics, and you gave your answer as "No."

A. I did.

Q. Do you remember that?

A. Yes, sir.

Q. You were asked, "Would you have gone to 138 Union Street [fol. 708] if you knew that the packages contained cocaine or narcotics; that is true, is it?"

A. Yes, sir.

Q. You would not have gone?

A. No, sir.

Q. Did you ever see narcotics before?

A. No, sir.

Mr. Brancato: Let me have that bag, please, Mr. Clerk.

Mr. Price: I object at this time to Mr. Brancato bringing anything over or showing anything to the jury which is not in evidence.

The Court: Objection overruled.

Mr. Price: I except.

The Court: He cannot show it to the jury except that he may bring it out.

Mr. Price: I just want to let you know what I am after.

The Court: Yes. Just let the Clerk keep it out of sight of the jury while argument is had with the Court. The stenographer can make that note.

(A conference was held between the Court and counsel.)

The Court: The objection raised by the defence is overruled.
Mr. Price: I except.

By Mr. Brancato:

Q. I show you this can, Mr. Agnello, and ask you if you ever saw it before? ✓

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial. ✓

A. No, sir.

Mr. Price: My client overruled me.

[fol. 709] By Mr. Brancato:

Q. Did you ever see it in your house?

A. No, sir, I did not.

Q. You are sure about that?

A. Yes, sir.

Q. You sleep back of the store, don't you, at 167?

A. I do.

Q. Tom sleeps there also?

A. No.

Q. What?

A. No, sir.

Q. He does not?

A. No, sir.

Q. Where does he sleep?

A. He lives on Strong Place.

Q. He lives on Strong Place?

A. Yes, sir.

Q. Is he married?

A. I don't know. I don't think so.

Q. You don't know?

Mr. Price: He says, "I don't know. I don't think so."

Mr. Brancato: He says he don't know.

A. He is not married.

By Mr. Brancato:

Q. Why did you say that you did not know? Why do you say that you don't know?

A. You can ask him.

Q. What?

A. I am not sure. I don't think he is married.

Q. I am asking you why did you say you don't know whether he was married or not?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial. My brother was married two years and I did not know it.

[fol. 710] By Mr. Brancato:

- Q. Which is it? He is married or not married.
 A. He is not married.
 Q. Have you any other brothers?
 A. No, sir.
 Q. How many in the family?
 A. Five.
 ✕ Q. Father, and mother, yourself, and your brother Tom?
 A. Yes.
 Q. Who else?
 A. My sister.
 Q. Is your sister older than you or younger?
 A. Older.
 Q. Is she married?
 A. No, sir.
 Q. She lives at home with you, does she?
 A. Yes, sir.
 Q. Everybody lives at home at 167 except your brother Tom?
 A. Yes, sir.
 Q. He lives on Strong Place?
 A. Yes, sir.
 ✕ Q. Have you ever been in his house?
 A. No, sir.

By the Court:

- Q. How far away does he live from you?
 A. About three blocks.
 Q. Are you on good terms with him?
 A. Yes, sir.
 Q. How long has he lived there?
 A. Not long, about a year.
 Q. You have never been in his house?
 A. No, he is always down at the store.

By Mr. Brancato:

- Q. Does he have a furnished room there?
 A. I don't know; I think it is.
 Q. But you are the only one sleeping in the back room, is that right?
 A. Yes, sir.
 Q. In the back of the store?
 A. Yes, sir.
 [fol. 711] Q. You have a wardrobe there, haven't you?
 A. Yes, two.
 Q. Two wardrobes there?
 A. Yes, sir.
 Q. You keep your clothes there yourself, don't you?
 A. Yes, sir.
 Q. Your own clothes?

A. Yes, sir.

Q. You kept your clothes there on January 16th?

A. I did.

Q. And before that time?

A. Yes, sir.

Q. You never saw this can in that wardrobe?

Mr. Price: I submit that he has already asked him three times and he said he never saw it before.

The Court: Is that an objection?

Mr. Price: An objection on the ground that he has already testified.

The Court: Objection sustained; if he has denied it once, that is enough.

Mr. Brancato: I offer this can for identification.

The Court: Mark it.

(Received in evidence and marked United States Exhibit 12 for identification.)

By Mr. Brancato:

Q. Which is the shorter way to 138 Union Street from your house, going up Columbia Street to Union, or going up Columbia to Degraw and up Hicks and down, up to Union, down to Union?

A. Well, there is about fifteen paces difference.

Q. Fifteen paces difference, is that what you say?

A. Yes, sir.

Q. Now, let us get this right, 138 Union Street is about half way [fol. 712] on Union Street between Columbia and Hicks Street, isn't that right?

A. No, more to Hicks Street.

Q. Nearer to Hicks Street?

A. Yes, sir.

Q. How many feet would you say it is from Hicks Street?

A. I could not say.

Q. Would you say it was a quarter of a block?

A. A little less than that.

Q. A little less than a quarter of a block from Hicks Street; that is true?

A. Yes, sir.

Q. Who else did you meet on your way up Degraw Street besides your friend?

A. That is all.

Q. Is he the only fellow that you met?

A. Yes, sir.

Q. How did you walk; did you walk fast?

A. Not so fast.

Q. Took your time going up to 138?

A. Yes, sir.

Q. When you got to 138, you saw your brother and Pace, did you?

A. Yes.

Q. They were there waiting for you or were you there waiting for them?

A. No, I did not expect my brother at all.

Q. I did not ask if you expected him or not.

Mr. Brancato: I move to strike out that part of the answer.

The Court: Strike out that part of the answer.

By Mr. Brancato:

Q. Were you waiting there for the three or for Centorino, at the time that you arrived?

A. I was waiting for Centorino.

Q. You got there before him, did you?

A. I did.

[fol. 713] Q. How long before did you get there?

A. About five or six or seven minutes.

Q. When you got there, who called you over?

A. Centorino.

Q. You walked inside?

A. No, first I went over to him.

Q. Where?

A. Where he called me.

Q. Where was he standing when he called you?

A. Near 138.

Q. How near 138 was he?

A. About five feet.

Q. From where?

A. From 138.

Q. 138 is a twenty-foot house, isn't it?

A. About that.

Q. Well, was he standing five feet next to the house?

A. No, five feet away from the house.

Q. I suppose he was right in front of 138, was he?

A. Yes, sir.

Q. He called you over?

A. He did.

Q. Your brother said, "What are you doing here?"

A. Yes, sir.

Q. That is true, is it?

A. Yes, sir.

Q. And you told him what?

A. Centorino—I did not tell him nothing; Centorino answered him.

Q. What did he say?

A. Centorino says, "he is on an errand for me."

Q. "He is on an errand for me," and you walked inside?

A. No, my brother was going away—

Q. He was going up to the club?

A. I don't know where he was going.

Q. Oh, you don't know where he was going?

A. No, sir.

Q. You are sure about that?

A. Positive.

Q. Why, didn't you brother say to Centorino, "I am going up to the club to meet somebody?"

A. I did not hear it.

[fol. 714] Q. "I cannot come inside"?

A. I did not hear that. At that moment I did not know he was going to the club.

Q. When did you find out that he was going to the club?

A. I did not find out at all.

Q. You heard it in Court, didn't you?

A. Yes, sir.

Q. You did not hear it before today, did you?

A. Why, yes.

Q. When?

A. Yesterday.

Q. Yesterday?

A. I mean Friday.

Q. Then Centorino insisted on your brother going in and having a piece of pastry, is that right?

A. Yes, sir.

Q. He wanted to treat your brother?

A. James Pace, too.

Q. He wanted to treat them to a piece of pastry?

A. Yes, sir.

Q. All this time you had the cocaine in your pocket?

A. I did not know what it was; there was packages.

Q. You can read English, can't you?

A. Yes, sir; I can.

Q. Read Italian?

A. No, not Italian.

Q. Just read this label here. (Indicating.)

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and speaks for itself.

By Mr. Brancato:

Q. (Continuing:) On Government's Exhibit 4.

The Court: Objection overruled.

Mr. Price: I except.

[fol. 715] By Mr. Brancato:

Q. See if that gives you an idea of what the contents of that package is?

A. Cocaina.

Q. Yes, you did not know what it was, did you?

A. No, sir.

Q. Did you see that on that night?

A. No, sir.

Q. You did not look at it?

A. No, sir.

Q. Did you ask Centorino what was in the packages?

A. No, sir.

Q. Just what did you say to Centorino when he asked you to go up to 138 Union Street with some packages?

A. I told him, "If it was going to take me long," and he said, "No, just a few minutes."

Q. What did he say?

A. He says that if I would do him a favor and carry the packages.

Q. Carry them up there?

A. Yes, sir.

Q. They were not heavy, were they?

A. No, not heavy.

Q. Did you see any reason why he should not carry them?

Mr. Price: I object to it; he cannot read the other man's mind.

The Court: Objection overruled.

Mr. Price: I except.

A. I did not know.

By Mr. Brancato:

Q. As far as you could tell, there was no reason why Centorino should not carry those packages?

A. I don't know.

Q. I say as far as you know, as far as you can tell, there is no reason?

A. I don't know.

[fol. 716] Q. What do you mean, "You don't know"?

A. I don't know.

Q. Did he tell you to put them in your pocket?

A. Yes.

Q. Did he help himself to put them in your pocket?

A. Yes, sir, he did.

Q. You put some in your pocket?

A. I did.

Q. Without asking any questions as to why or wherefore, you simply took those packages and put them in your pocket, and walked down to 138 Union Street, is that right?

A. Yes, sir.

Q. You did not ask Centorino what is in them, did you?

A. No, sir.

Q. You are not accustomed to ask those questions, are you?

A. What do you mean?

Q. I say, you are not accustomed to ask those questions, if anybody—

A. I don't know what you mean by "accustomed."

Q. Then you are not used to it?

By the Court:

Q. Did you ever have a thing like this happen before?

A. No, sir.

Q. Did it strike you as being strange?

A. Yes, sir.

Q. If it struck you as being strange, you did not ask anything about it?

A. I did not ask him.

By Mr. Brancato:

Q. Although nobody ever asked you in your life before to carry a package except this time that Centorino did, you did not think it was peculiar or strange to find out from him what was in the packages?

A. I did not find out.

Q. You did not find out?

A. No.

Q. What did he say when you got to the door?

A. At what door, number 138?

[fol. 717] Q. No, when he got in front of your door, Number 167 Columbia Street?

A. He told me, "If I would do him a favor and carry the package."

Q. He told you that inside, didn't he?

A. Inside the store.

Q. After you got outside and you had the cocaine packages in your pocket, what did you do; what did he say to you?

A. He told me everything in the store; he did not tell me nothing outside. I went out before him. I don't know. He says, "I will be right up there."

Q. He said, "I will be right up there?"

A. Yes, sir.

Q. You did not see him any more, did you?

A. About five minutes I did, after waiting across the way.

Q. Now, we are still at Columbia Street, after he told you or asked you to carry these packages to Number 138, you say that you left the store?

A. Yes, sir.

Q. He remained in the store, did he?

A. He went out.

Q. Did you go out before him or did you go out after him?

A. I went out and he went out after me.

Q. Did you go out arm in arm?

A. No.

Q. You were before him?

A. Yes, sir.

Q. Did you turn your back to him?

A. Yes, sir.

Q. After you turned your back to him, you went up Columbia Street?

A. Yes, sir.

Q. You did not look back, did you?

A. No, sir.

Q. So you could not tell—you did not know of your own knowledge whether Centorino stayed inside the store or came out on the sidewalk?

A. I left him outside the store; that is all I know.

[fol. 718] Q. You left him outside the store?

A. Yes, sir.

Q. Didn't you say that you left the store first?

A. Yes, he was right in back of me when I opened the door, I was first, then he followed me.

Q. You opened the door—see if I am right. You opened the door of the store, you walked out and somebody else walked out behind you?

A. Yes, sir.

Q. But you could not say it was Centorino, could you?

A. Yes, it was Centorino.

Q. You saw him?

A. Yes, sir.

Q. Did you turn back?

A. Yes, at that minute, when I went away—I did not turn back.

Q. After you left the store, you say that you left him outside?

A. Yes.

Q. How far from the door was he?

A. About two feet.

Q. You left him standing there?

A. Yes, sir.

Q. That is true, is it?

A. Yes, sir.

Q. You walked up Columbia Street?

A. I did.

Q. He did not walk up Columbia Street, did he, with you?

A. No, sir.

Q. You went to Degraw?

A. I went to Degraw.

Q. Then you have told us what happened?

A. Yes, sir.

Q. You have told us everything that happened?

A. Yes, sir.

Mr. Brancato: That is all, Mr. Agnello.

Redirect examination by Mr. Price:

Q. At the time that you received the blue packages from Centorino, did you read them?

A. No, sir; I did not have a chance to read them.

[fol. 719] Q. Did you think at the time that he gave you those packages that he would have asked you to do anything wrong?

A. I did not know it was anything wrong.

Q. Did you believe that he would ask you to do something that was wrong?

A. No, sir.

Mr. Price: That is all. The defendants rest.

The Court: Any rebuttal?

Mr. Brancato: Yes.

Rebuttal

COLEMAN MANNING, recalled as witness on behalf of the United States in rebuttal, testified as follows:

Direct examination by Mr. Brancato:

Q. Now Officer Manning, do you remember the night of January 16th when these defendants were arrested?

A. I do.

Q. After these arrests were made and the prisoners were taken to the station house by other agents, did you leave the premises 138 Union Street?

A. I did.

Q. Where did you go?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Price: I except.

A. 172 Columbia Street.

Q. 172?

A. Yes.

Q. Whose home is that?

A. Centorino.

[fol. 720] Q. Did you make a search of the premises there?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial, and absolutely no warrant in law or in any process of law to make a search.

The Court: Objection overruled.

Mr. Kesselman: I object to it upon the same ground, in behalf of the defendants whom I represent.

The Court: Objection overruled.

Mr. Price: I object to it on the further ground that it is an illegal search under the law. He had no right or no business under the Constitution of the United States to go into this defendant's home and search it.

The Court: Objection overruled.

Mr. Price: I except.

Mr. Kesselman: Exception.

By Mr. Brancato:

Q. Did you make a search?

A. I did.

Q. Did you find anything there?

A. No, sir.

Mr. Price: I object to it.

Mr. Brancato: "No, sir" the answer is.

Mr. Price: I am going to be consistent. I am going to object to it as incompetent, irrelevant and immaterial. He had no business to search there. Anything that he found there, if anything, could not be used as evidence against the defendants.

The Court: Objection overruled. L

Mr. Price: I except.

[fol. 721] By Mr. Brancato:

Q. Now, from Number 172 Columbia Street where did you go?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial and not proper rebuttal and on the further ground stated in my last objection.

The Court: Objection overruled.

Mr. Price: I except.

A. 167. Columbia Street.

By Mr. Brancato:

Q. That is the home of Agnello?

Mr. Kesselman: I object to the question as leading. This witness testified, Mr. Brancato, at great length. Mr. Brancato has always insisted that no witness should be led. Let him testify himself.

The Court: Very well. Objection sustained.

Mr. Brancato: It has been testified to by everybody.

The Court: The jury understands it and you understand it.

By Mr. Brancato:

+ Q. You did go to 167 Columbia Street, did you?

A. I did.

Q. What kind of a business place is that?

A. An Italian grocery store.

+ Q. Now, will you describe the premises, 167 Columbia Street?

Mr. Price: I object to that on the ground that it is not proper rebuttal.

[fol. 722] The Court: Objection overruled.

Mr. Price: I except.

A. This is a store and the living rooms in back.

By Mr. Brancato:

Q. How many room are there in the back?

A. ~~Two~~ rooms.

Q. Now, did you, together with McCormick and Oyler, make a search of the living rooms in the back at that time?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial, and on the further ground that this witness had no search warrant, had no business to make a search; if he did make a search in there, what he found was illegal, as the result of an illegal search, violating the defendant's constitutional rights, and it is not admissible in evidence against him.

The Court: Objection overruled.

Mr. Price: I except.

Mr. Kessleman: Objected to upon the same grounds as above, on behalf of the other defendants.

The Court: Objection overruled.

Mr. Kesselman: Exception.

By Mr. Brancato:

Q. Did you make a search?

A. I did.

Q. I show you Government Exhibit 12 for identification and ask you if you saw this can before today?

Mr. Price: I object to it on the same ground.

The Court: Objection overruled.

Mr. Price: I except.

[fol. 723] Mr. Kesselman: Objected to upon the ground that it is incompetent, irrelevant and immaterial, and no connection shown with any of these defendants.

The Court: Objection overruled.

Mr. Kesselman: Exception.

A. I did.

By Mr. Brancato:

Q. Where did you see it?

Mr. Kesselman: I object to that upon the same grounds.

The Court: Objection overruled.

Mr. Kesselman: Exception.

Mr. Price: I make the same objection.

The Court: The same ruling.

Mr. Price: I except. Without objection I suppose that your Honor is going to overrule the objection all the time. You will know my point in the case is that this cannot be used on the ground that it was taken away from him without their having a search warrant.

The Court: Yes, I think any one of the objections that have been made raises the point distinctly in the event that error has been committed.

Mr. Price: I except.

Mr. Kesselman: Your Honor will allow me an objection and exception to each of these questions, the same thing, on behalf of my clients?

The Court: It is so understood.

Mr. Wackerman: Have it noted for me also.

The Court: So understood.

A. 167 in the living rooms, on Columbia Street.

[fol. 724] By Mr. Brancato:

Q. Where was it; just tell us where you found it?

A. On top of a wardrobe in the bedroom.

By the Court:

Q. How many bedrooms on that floor?

A. It is one large room. There is a bed in it. I don't know whether they call it a bedroom there or not.

Q. It is the large room at the rear of the store?

A. A large room and then a small room off. I cannot tell whether it is a bedroom or not.

By Mr. Brancato:

Q. You found that, you say, in the room next to the store?

A. Yes, sir.

Q. In which there is a bed?

A. Yes, sir.

Q. You say that it was in the wardrobe?

Mr. Kesselman: He said on a wardrobe.

A. On top.

By Mr. Brancato:

Q. On top of a wardrobe?

A. Yes, sir.

Q. You took it? You, Oyler and McCormick?

A. Officer McCormick found it.

Q. Were you present?

A. I was.

Q. Are there any marks on that can that you put there for the purposes of identification?

A. There is.

Q. Where?

A. Scratched in the can, initials.

Q. I see, your initials are on it?

A. Yes, sure are.

Q. What was done with the can after the search was made?

A. It was taken to the office.

[fol. 725] Q. What office do you mean?

A. Our office in the narcotic division, post office, New York City.

Mr. Brancato: Now, if the Court please, I must ask the Court to be indulgent and ask for an adjournment until tomorrow morning, to follow up that can.

The Court: Are you through with this witness.

Mr. Brancato: Yes. He has got to be cross-examined.

Cross-examination by Mr. Kesselman:

Q. You had no search warrant to enter the premises, 167 Columbia Street, did you?

A. I did not.

Mr. Kesselman: That is all, sir.

Mr. Brancato: That is all, Mr. Manning.

The Court: Now, how much testimony has the Government to offer in rebuttal in addition to Manning, who has now testified? How many witnesses?

Mr. Brancato: The chemist, to show what it contains.

The Court: Yes, I understand.

Mr. Brancato: And Oyler to corroborate the finding of the can there.

The Court: Two, so far.

Mr. Brancato: Nunzio to deny the statements made.

The Court: Three, so far.

Mr. Brancato: Yes.

The Court: If the defense follows the same practice in respect to Oyler, his testimony will take only a few minutes.

[fol. 726] Mr. Kesselman: That is the only question that I shall raise, is the matter of the illegal entry and search.

The Court: All right, the chemist's report should not take very long.

Mr. Brancato: No.

The Court: Then Nunzio?

Mr. Brancato: Yes.

The Court: He will be produced?

Mr. Brancato: He will be here tomorrow.

The Court: Very well, we will take an adjournment until ten o'clock tomorrow morning.

How long will you take to sum up?

Mr. Kesselman: I will take thirty minutes to sum up.

Mr. Price: I will take about the same.

Mr. Brancato: The Government won't take any more than an hour.

The Court: These gentlemen are going to take thirty minutes apiece.

Mr. Price: I am willing to submit my case to the jury on the judge's charge.

Mr. Brancato: We will sum up the case.

The Court: I think we ought to get to the jury by the end of the forenoon.

(At this point an adjournment was taken to March 21st, 1922, at 10 o'clock.)

[fol. 727]

UNITED STATES

VS.

ALBA et al.

Brooklyn, N. Y., March 21st, 1922—10 o'clock a. m.

Before Hon. Garvin, J., and a Jury

Appearances: Same as heretofore.

The Court: May we go on without Mr. Price?

Mr. Kesselman: Yes, I will concede for the purposes of the record that if Mr. Oyler and the other agents were called that they would testify in substance to what Mr. Manning testified to, with the reservation that we do not concede the right of the Government officers to be at those premises, and we contend that their entry or their taking the can, which is marked for identification, was unlawful and illegal. I will do that for the purpose of saving time.

The Court: Very well.

Mr. Kesselman: I want to reserve whatever rights we have.

Mr. Brancato: How about the contents. Do you concede that the chemist would testify that it is cocaine? He is coming here.

Mr. Kesselman: If it has been—

Mr. Brancato: There is to be no mistake that the proper thing was analyzed, the contents of the whole can offered last night.

Mr. Kesselman: Has he analyzed it?

Mr. Brancato: Yes. Manning, did he analyze that?

Mr. Manning: Yes.

[fol. 728] The Court: The United States against Agnello, the Government is ready?

Mr. Kesselman: Yes.

The Court: There is a concession?

Mr. Kesselman: For the purposes of the record it is stipulated and agreed that if Mr. Oyler and what other agents were present—

Mr. Brancato: McCormick.

Mr. Kesselman (continuing): McCormick, were called to the stand to testify, that they would testify in substance to what Officer Manning, who testified yesterday, testified to, with the reservation that the defendants, or either of them, do not waive any right or claim which has been made and advanced that the agents had no right to be in the premises, Number 167 Columbia Street on January 16th. or to take any evidence or any exhibits which have been or are about to be offered here.

The Court: This stipulation is to be made in behalf of all of them?

Mr. Price: I would like to have that read.

The Court: I inquired before you came into the room whether it was agreed on.

(The stipulation offered by Mr. Kesselman was repeated by the reporter.)

The Court: This stipulation, gentlemen, is made in behalf of all of the defendants?

Mr. Price: Yes, sir; with the understanding that our objections and exceptions made to the testimony of Manning goes to the very testimony that Oyler and McCormick would give, granting us an objection and exception to that portion of the testimony.

[fol. 729] I want to add my defendant, Centorino, further objects to it on the ground that it is incompetent, irrelevant and immaterial, and an endeavor on the part of the Government to prove as against all of the defendants, a crime not charged in the indictment.

The Court: Yes.

Mr. Price: Your Honor is overruling my objection?

The Court: Yes, sir; and allowing an exception to each of the defendants.

Mr. Brancato: I understand it is contended that the rights of these defendants have been violated as guaranteed to them by the fourth article of the Constitution?

Mr. Price: And upon all the other grounds that I stated. Might I further object to this testimony, this stipulation, on the ground that this will not be admissible against my client, Centorino, on the ground that the conspiracy had already terminated, and anything found or done after the termination of the conspiracy would not be binding upon my client.

The Court: What about that?

Mr. Brancato: There is a charge of selling, in which they are all charged with selling, besides the conspiracy.

The Court: It is just the sale?

Mr. Brancato: Certainly.

The Court: Just admitted as to the second count, as to Centorino?

Mr. Brancato: No, I do not concede that it is not; it may be in the conspiracy.

The Court: How can it be binding after the conspiracy is over?

[fol. 730] Mr. Brancato: It is not exactly over, if the Court please; we have one act; that is the time that the stuff was in the room, understand, when these four defendants came out of the store, this cocaine was in the house at the time, and at that time the conspiracy had not been finished. The mere fact that it was found a half hour afterwards does not change the status. It was in there at the time of the conspiracy.

The Court: Very well. The evidence is admitted only as to the second count in the indictment as to Centorino.

Mr. Price: I except.

The Court: Isn't that what you wanted?

Mr. Price: I make the general objection. Your Honor overrules it?

The Court: Yes.

Mr. Price: And I take an exception.

NUNZIO DISPENZA, recalled as a witness on behalf of the United States, in rebuttal, and having been previously duly sworn, testified as follows:

Direct examination by Mr. Brancato:

Q. It has been testified to here on January 13th, Friday, you went to the premises 138 Union Street and there saw or spoke with the defendant Alba, is that so?

A. No, sir.

Q. On that day, January 13th, did you see the defendant Alba?

A. No, sir.

Q. Did you on that day, January 13th, see the defendant Centorino?

A. No, sir.

Q. Did you have any conversation or any talk with either of those two defendants, on January 13th?

A. No, sir.

[fol. 731] Q. Did you see them at all?

A. No, sir.

Q. It has also been testified that the two samples, Government's Exhibits 1 and 2 for identification, were given by you to Centorino on January 13th, did you give these two samples to him on that day?

A. No, sir.

Q. Did you say to either one of these two defendants, Alba or Centorino, that you had a friend to whom you wanted to sell some cocaine; that because you could not get the price that you wanted, that you wanted Centorino to appear that he was the seller?

A. No, sir.

Q. Did you on January 16th, Monday morning, go to 172 Columbia Street to see the defendant Centorino?

A. No, sir.

Q. Did you see him on that morning?

A. No, sir.

Q. Did you on that morning give him a package?

A. No, sir.

Q. Did you on that morning, give him a package and say to him, "Good-bye, I will see you tonight?"

A. No, sir.

Q. When was the first time that you saw him on Monday, January 16th?

A. About half-past seven or eight o'clock at night.

Q. In the evening?

A. Yes, sir.

Mr. Brancato: That is all.

Cross-examination by Mr. Price:

Q. Do you know Pastry's Garage in Brooklyn?

A. Pastry's Garage?

Q. Yes?

A. Yes, sir.

Q. Did you keep your automobile in that garage?

A. No, sir.

Mr. Brancato: One moment, I object to the question as not being [fol. 732] proper cross-examination or rebuttal, we are here on rebuttal, not reopen the case in the main.

Mr. Price: It is within your Honor's discretion.

The Court: Is this testimony that ordinarily would have come out on cross-examination?

Mr. Price: No, I did not have the information that I have now.

Mr. Brancato: I object to any further cross-examination unless it is upon rebuttal.

The Court: Upon the statement of the counsel, the Court believes that all the facts should be submitted to the jury. Counsel states that he has just or since the cross-examination of the witness, has obtained information with respect to his testimony. The Court believes that he should be permitted to cross-examine on that subject. Proceed.

By Mr. Price:

Q. Did you ever have your automobile repaired in Pastry's garage?

A. No, sir.

Q. Did you ever own an automobile?

A. Yes, sir.

Q. Do you know a man by the name of Anthony Vicaccio? Come up here. (Beckoning to man in Court Room.)

Q. Do you know this man?

A. Yes, sir.

Mr. Price: All right. Go outside again.

By Mr. Price:

Q. When you were working down along the waterfront, weren't you working under the name of Andy Dispenza?

A. No, sir.

Q. Weren't you a member of the Cattle Feeders Union?

A. Yes, sir.

[fol. 733] Q. Under the name of Andy?

A. No, sir; no.

Q. Wasn't this man a walking delegate of the Union?

A. Yes, sir; known as Yampo.

Q. That is his nickname? That is all you know him by?

A. Yes, sir.

Q. You have been out with him in your automobile?

A. No, sir.

Q. Never?

A. No, sir; never.

HAROLD B. GAMMELL, recalled by the United States and having been previously duly sworn, testified as follows, in rebuttal:

Direct examination by Mr. Brancato:

Q. Did you receive this can, Government's Exhibit 12 for Identification, last night?

A. I did.

Q. Who brought it to your office?

A. Agent Manning.

Q. By the way, was it sealed, as it is now?

A. Yes, sealed on the top.

Q. A wax seal, is it?

A. Yes, sir.

Q. Did you open the can?

A. Yes, sir; I did.

Q. Did you make an analysis of the contents of that can?

A. I did.

Q. What did you find it to contain?

Mr. Price: I object to it on the ground that it is incompetent, irrelevant and immaterial; all on the grounds stated before when Manning testified; and under our stipulation.

The Court: Objection overruled.

Mr. Price: I except.

Mr. Kesselman: I object to it, on the same grounds, on behalf of the defendants whom I represent.

[fol. 734] The Court: The same ruling.

Mr. Kesselman: Exception.

Mr. Wackerman: I object on the further ground that there is no proof that the can is in the same condition as it was when it was found.

Mr. Brancato: I assume that it is conceded. If you want me to put Oyler on the stand, I will put him on the stand. I understood the concession to be that the other witnesses would testify the same as Manning did. If you are going to take any point on that, I have Manning here and I have all the agents that will testify that the can has been in their office all the time.

The Court: If they want the testimony, we will have the testimony.

Mr. Wackerman: I do not want to raise any technical objection, but as I understood—

The Court: It is a substantial objection, if the defense presses it.

Mr. Wackerman: If Mr. Kesselman thinks I should not press it, I will withdraw the objection.

The Court: Very well.

By Mr. Brancato:

Q. What did you find?

A. Cocaine hydrochloride, hydrochloride.

Mr. Wackerman: At this time I object to any proof that there was any cocaine found or seized, regarding any of these defendants, under the conspiracy charge, on the ground that it is not charged [fol. 735] in the indictment, and the indictment, by the plain wording of the language merely charges a conspiracy to sell heroin. The Courts have constantly held, if the language is susceptible of a different meaning, the indictment is——

The Court: Objection overruled.

Mr. Wackerman: Exception.

Mr. Brancato: That is all.

By the Court:

Q. What is cocaine hydrochloride?

A. It is a derivative. You mean the formula for it?

Q. No, what you just described?

A. It is a derivative of coca leaves.

By Mr. Price:

Q. Did you ever hear of novocaine?

A. I have.

Q. Isn't that novocaine?

A. No, sir.

Q. Isn't that one of Herman A. Metz's products?

A. I don't know.

Q. Look at it and see?

A. I don't know.

Q. Did you test it for novocaine?

A. I did not.

Mr. Price: That is all.

By the Court:

Q. Could it be both?

A. It might be. It was cocaine first, I got the good test for cocaine; I did not go any further.

By Mr. Price:

Q. It could be novocaine, too, couldn't it?

A. No, if it is cocaine, it is not novocaine.

Q. That is what his Honor asked, if it could be both; didn't you say it could?

A. I said that there might be some in there.

[fol. 736] Q. Isn't there a question now pending between the Federal authorities and the Metz Corporation about selling novocaine?

Mr. Brancato: One moment. I object to this as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Price: I except.

The Court: That is all.

Mr. Price: May I have this can sent out, as I asked your Honor? I would like to send it up to the Metz laboratories right away with a taxicab and go ahead and sum up the case, if necessary.

The Court: We will have to have it sent up in the custody of an officer of the Court.

Mr. Price: Yes, I have no objection.

Mr. Brancato: I offer the can in evidence now.

Mr. Price: I object to it on all the grounds stated before.

Take a sample and seal it. It can be opened and a little put in an envelope, and your Honor can seal it, put your name on it, and take it up to the Metz laboratories, my man can.

The Court: The Clerk can do that. Received in evidence.

Mr. Kesselman: Before your Honor directs the clerk to mark it in evidence, may I have my objection?

The Court: Certainly.

Mr. Kesselman: I object to it upon the ground that it is incompetent, irrelevant and immaterial and on the further ground that it was after the termination of the conspiracy and upon the further [fol. 737] ground that the officers had no right to take or seize it whatever it was, being an illegal entry and search.

The Court: It is received as against Centorino and Alba only on the second count.

Mr. Kesselman: Exception.

Mr. Price: I make the same objections.

The Court: Objection overruled.

Mr. Price: I except.

Mr. Wackerman: I make the same objections on behalf of my client.

The Court: Objection overruled.

Mr. Wackerman: Exception.

The Court: The same ruling with respect to the limitation to which it is received; that is understood. (Can marked in evidence "Govt. Ex. No. 12.")

Mr. Brancato: This examination of the cocaine in the can by another chemist, I assume it is not going to be a part of his case?

The Court: It certainly is not. I do not know why they urge it now.

Mr. Price: I have not had an opportunity until this morning of determining what was in the can. I had not seen it. It has been in the custody of the Government. I assume if the chemist of Metz & Company will come down here and say it is not cocaine, that it is novocaine, your Honor will let me put in that testimony. If you won't let me put in that testimony—

The Court: The case will not be reopened. How long does it take to make an analysis?

Mr. Price: The man said it would take three minutes.

[fol. 738] The Court: Why wasn't the chemist in court?

Mr. Price: I could not get him here.

Mr. Brancato: It has been here for a whole week; counsel knows it.

Mr. Price: I don't know any such thing.

Mr. Brancato: You objected on last Monday about my putting this thing in evidence.

Mr. Price: I say this to your Honor, that the man said that he did not have the proper implements to make the test in Court.

The Court: The defendants were apprised yesterday that the Government would seek to offer the can in evidence. It was the duty of the defendants to have a chemist here to make a test in Court, if they questioned the truth of the contenton by the Government that the can contained cocaine.

Mr. Price: I will state to your Honor that I sent to the Lindley laboratories——

Mr. Brancato: I object to any statements by counsel.

The Court: The jury will disregard it; the only sworn testimony is that this is cocaine.

Mr. Price: Certainly. I sent to the Lindley Laboratories to get a chemist. I could not get one. I tried a concern over in New York, the Paula Laboratory. I spoke to Mr. Paula. I had a man from the Metz Laboratories come to my office. He said he could not come to Court.

The Court: Why should he come to your office and not to Court?

Mr. Price: Because he did not have the proper implements to [fol. 739] make the proper analytical analyses. I ask your Honor to permit the marshal and my representative, to take a small sample of this to the laboratory and have it analyzed.

The Court: The Court declines to have the trial delayed for that purpose.

Mr. Price: Exception.

Mr. Brancato: The Government rests.

Mr. Price: I want to call this one witness to rebut what this man says.

The Court: Does the defence ask to reopen the case?

Mr. Price: Yes.

The Court: Motion granted.

Sur-rebuttal

ANTHONY VACCACIO, called as a witness in behalf of the defendants, being duly sworn, testified as follows in sur-rebuttal:

Direct examination by Mr. Price:

Q. What is your business?

A. Ship's carpenter.

Q. During the war were you a United States Government Inspector?

A. Yes, sir; examiner.

Q. Examiner of labor?

A. Yes, sir.

Q. In that capacity did you come in contact with the man who was on the witness stand, Dispenza?

A. Yes, sir.

Q. What name did you know him by?

A. Andy Dispenza.

Q. Did you ever know him under the name of Nunzio Dispenza?

A. No, sir.

Q. Now, he has testified here that you never rode in his automobile?

A. In the year 1920 I did.

[fol. 740] Q. Where did you go with him?

A. Down to Coney Island.

Mr. Price: That is all.

Cross-examination by Mr. Brancato:

Q. Is that all you know about him?

A. That is all I know about him.

Mr. Brancato: All right; that is all.

Mr. Price: Defendants rest.

Mr. Brancato: Government rests.

The Court: The testimony is in and both sides rest.

MOTIONS TO DISMISS INDICTMENT AND ORDERS OVERRULING SAME

Mr. Price: Now, on the entire case, on behalf of the defendant Centorino, I renew all the motions made at the end of the Government's case, on all the grounds stated. I ask your Honor to dismiss the indictment on the ground that there are not facts sufficient to constitute a crime, and to direct a verdict of acquittal, on the ground that the evidence is insufficient, as a matter of law, to convict the defendant of the crime charged in the indictment or any other crime, and on all the other grounds stated at the end of the Government's case.

The Court: Motion denied.

Mr. Price: I except.

Mr. Kesselman: On behalf of the other defendants I renew the motions made at the end of the Government's case, on the ground that the Government has failed to prove the crime of conspiracy against the defendants or either of them or any other crime, and upon all the grounds which I urged at the close of the Government's case.

[fol. 741] The Court: Motion denied.

Mr. Kesselman: Exception.

Mr. Wackerman: I renew my motion made at the close of the Government's case to dismiss, on the ground that these defendants are not alleged by the indictment, to be in any of the classes required by the Act to register, as set forth in Section 1 of the Act, which makes it unlawful for those required to register, not to register.

The Court: Motion denied.

Mr. Wackerman: Exception.

I will now move to dismiss on the ground that there is no allegation in the indictment that these defendants violated Section 2 of the Act, which requires that it shall be unlawful for any person to sell, except upon the written order of the person to whom it is sold, urging that that is a necessary element of the offence under the Act.

The Court: Motion denied.

Mr. Wackerman: Exception.

I will now move to dismiss on the ground that under that indictment the conspiracy charge is so indefinite and uncertain as not to fully apprise the defendants of their rights; that it merely charges them with the crime of selling heroin; that a plain reading of the indictment shows that the defendants have been accused of selling a large quantity of heroin, which is a derivative of opium and cocaine.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss on the ground that the allegations in the indictment fixing the time of the offense as on or about and between the 10th day of January, 1922, is so uncertain and indefinite as not to [fol. 742] fully apprise the defendants of the time of the charge.

I now move to dismiss on the ground that that part of the indictment, about the center of it, which alleges, that is to say that the above named defendants, at the time and place aforementioned, did unlawfully and wilfully, etc., is so indefinite and uncertain as not to fully apprise the defendants of their rights, and on that the law has stated that each issue and triable fact must be re-alleged at the time and place of the happening.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss on the ground that the indictment does not merge into a completed offence, as set forth in the indictment.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss on the ground that the indictment for the conspiracy as a matter of law is defective, in that it does not allege any act done by one of the parties to the conspiracy, to effect the object of the conspiracy in order to make it a punishable offence.

I submit on this proposition that the Court cannot take into consideration any of the allegations of the overt acts as alleged, as not being part of the conspiracy indictment here; so that the indictment as alleging conspiracy is not a punishable offence on its face, because there must be some act alleged, which completes the conspiracy and marks a point where none of the defendants can leave it.

The Court: Motion denied.

Mr. Wackerman: Exception.

[fol. 743] I now move to dismiss on the ground that the conspiracy as charged in the indictment is defective, in that it does not allege any unlawful intent on the part of any of the defendants, because it does not allege that at the time the defendants entered into the conspiracy, any of them knew that the other was in it, unless the man, unless, for instance, my client, Frank Agnello, agreed with Alba to sell heroin or cocaine, it is necessary, in order to have him know what he was doing was illegal for him to also know that the man with whom he was making the arrangements was not registered and entitled to sell under the Act.

The Court: Motion denied.

Mr. Wackerman: Exception.

I will submit on that that in cases where a person or persons were charged with attempting to defraud the Government by obtaining possession to mineral lands and such things like that, that the Court held that it was necessary to allege that they knew that the object of the conspiracy, the thing they were about to do, to obtain lands on which there was minerals, must show that they knew at the time that it was unlawful. There is no allegation that this defendant knew that the other was not registered.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss on the further ground that there is no allegation that at the time of the conspiracy these defendants are alleged not to have been registered.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss on the further ground that the language of the indictment which charges this conspiracy, charges these defendants with conspiring to sell without being registered. A plain reading of the language can only mean one thing, and that means that at the time that they conspired they were not registered; they conspired in the past to sell in the future without having first registered; "without having first registered" can only apply to one thing, and that is the act of the conspiracy, and under the act of selling they are charged with conspiring to sell without having first registered. The clause that they did not first register can only apply to the time when they first conspired, not to the time when they began and agreed to sell.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss the second count in the indictment on the ground that it does not allege a crime with sufficient particularity to appraise the defendants of what they are charged with. It alleges that they did sell, it should allege that they did sell to some person, either by name or unknown to the Grand Jurors.

The Court: Motion denied.

Mr. Wackerman: Exception.

Mr. Wackerman: I move to dismiss on the ground that at the time these defendants are charged with selling, there is no allegation that the defendants knew that the other was not registered.

The Court: Motion denied.

Mr. Wackerman: Exception.

I now move to dismiss on the ground that the indictment is defective, in that it does not allege any particular place where they sold; it does not show that the offence occurred within the jurisdiction of this Court.

[fol. 745] The Court: What about that, Mr. Brancato? Where is the allegation in the second count that the offence occurred within the jurisdiction? The answer is "Nowhere."

Mr. Brancato: That is the answer.

The Court: How can we submit that to the jury? You can set the matter over, if you want to.

Mr. Brancato: There is not anything to be done; if it is not there, it is not there. Evidently the stenographer, whoever wrote it, forgot it.

The Court: Very well. Motion granted as to the second count. This is dismissed as to each of the defendants.

Mr. Kesselman: Will your Honor, at this time, then, instruct the jury that whatever evidence or testimony has been admitted under the second count of the indictment must be disregarded?

The Court: Motion granted. We have only to deal with the conspiracy in this case, concerning which the Court will instruct you fully.

The Court: The Court directs Counsel for the defence, each and every one, to submit forthwith any requests to charge the jury, so that the Court may have an opportunity to examine them during the summation.

Mr. Price: I have not prepared mine, yet. I do not know what your Honor is going to charge. Does that mean that you will preclude my offering—

The Court: I mean by that this: If the Court inadvertently omits to charge the jury upon any well recognized propositions of law that is involved in the conspiracy charge, that the Court will then charge it upon request; that the Court will not consider any complex [fol. 746] plicated or involved requests to charge, unless it is now made.

(The Jury, which had been excused during the motions of counsel, was now called back to the Court room).

(Mr. Kesselman summed up to the Jury).

(Mr. Price summed up to the Jury).

During Mr. Price's summing up to the jury the following objection was made:

Mr. Brancato: I object to counsel stating the rule of law, which is absolutely erroneous, when he said, "If a witness testifies falsely to a fact;" that is not the law. The law is, if he testifies falsely to a material fact.

Mr. Price: All right, to a material fact.

Mr. Brancato: You know it is wrong.

Mr. Price: The whole question is one for your determination. I

will go further and say to you that if any witness has knowingly and wilfully testified falsely to any material fact in the case, you may disregard his entire testimony.

(Mr. Brancato sums up to the jury.)

(During the summation by Mr. Brancato, the following objections were made:)

Mr. Brancato: He was found smuggling cocaine——

Mr. Price: I object to that statement. There is no evidence in the record to that effect whatsoever.

The Court: Objection sustained.

Mr. Price: I submit it is improper and I ask your Honor to instruct the jury to disregard that.

Mr. Brancato: The record clearly shows that he was getting off the steamer on May 17th, 1920, right there at 45th Street, that he [fol. 747] got a package, as he says, from some officer, was walking up the dock, was searched, and the package which the officer told him contained cocaine, was found hidden in his pants. If that is not smuggling cocaine, what is smuggling?

Mr. Price: I submit that is an improper statement. There is absolutely no evidence in that record that that package contained cocaine.

Mr. Brancato: I say he was charged with it.

The Court: Objection sustained.

Mr. Brancato: He was charged with having cocaine in his possession. All he said was, "I got it from an officer." He passes the buck.

Mr. Brancato: One of them, who has had cocaine before——

Mr. Price: I submit that is improper, and your Honor has so directed.

The Court: Yes, eliminate any reference to that.

Mr. Price: I at this time, on behalf of my client, move for the withdrawal of a juror on the ground that the summation of Mr. Brancato has prejudiced his rights.

The Court: Motion denied.

Mr. Price: I except.

The Court: Gentlemen of the jury, you are to disregard any contention made by the Government, if such a contention be made, that there is any proof in the record that the defendant Alba ever had any cocaine in his possession prior to the events connected with this trial. The testimony in the case with respect to his leaving the steamship two years ago goes no further than to establish, if believed, that officers of the Government stated to him that he had cocaine in his possession. There is no proof that he actually had cocaine.

[fol. 748] Mr. Brancato: There is proof that a package was found hidden under his pants and he was told at the time that he was being charged with having cocaine. He said nothing. That is the proof of the record, if I am not mistaken.

Mr. Price: I submit that is improper. There is absolutely no evidence before this jury that there was ever a case——

The Court: Yes.

Mr. Brancato: There was something found in his possession.

"If they get two men out there——"

Mr. Price: I submit that is an improper remark.

The Court: It is not evidence in the case, of course.

Mr. Brancato: I have a right to draw conclusions and inferences. I did not stop you from drawing—wild conclusions before.

Mr. Brancato: "The men dealt in this stuff before"——

Mr. Price: I submit that that is an improper statement and I now again make the same motion as I did before to withdraw a juror.

The Court: Motion denied. The jury will disregard any statement by any counsel in the summing up which does not accord with the evidence introduced at the trial.

Mr. Price: I except.

Mr. Brancato: Pace and Agnello own the stuff.

Mr. Price: I submit that is an improper statement. There is absolutely no evidence in this record upon which he can argue any such proposition to this jury. I move your Honor to instruct the jury to disregard this statement.

[fol. 749] The Court: It is for the jury to determine whether there is any evidence in the case to justify their finding the actual owners of the cocaine, whether Pace and Agnello.

Mr. Price: I except.

Mr. Brancato: Of course, nobody testified that Tom and Pace owns this junk. That is not what I want you men to believe, that anybody testified to that directly, of course not, but the fact is——

Mr. Wackerman: I dislike to interrupt Mr. Brancato, but at this point I object to any reference to anything found in the house on the last search made by Mr. Manning, on the ground of the right, as I understand it, upon which your Honor admitted that in evidence, has disappeared with the dismissal of the selling charge.

The Court: No, it is only admissible against Frank Agnello, his own home.

Mr. Wackerman: I am objecting to it on the ground that after the selling charge had disappeared, or been dismissed, that at that point the officers had no right to enter the house without a search warrant.

The Court: Motion denied.

Mr. Wackerman: Exception.

Mr. Brancato: I do not blame these lawyers for keeping the question of cocaine out of the evidence. Up to the time this was introduced, these Agnello boys appeared to be little angels, did not know what the stuff was until the can was produced, found in their own home, a two-pound can of cocaine; that was found in their home.

It was found at——

The Court: Frank Agnello's.

[fol. 750] Mr. Price: He has argued, "found in their home." The evidence is just to the contrary, that the defendant Thomas Agnello does not live there.

The Court: Yes.

Mr. Price: I move to strike out that statement of Mr. Brancato as improper and not in the evidence.

The Court: Motion granted.

CHARGE OF COURT TO JURY

GARVIN, J.:

The Court: If any person desires to leave the Court Room now, he may do so. No one will be permitted either to leave or enter during the charge of the Court.

Mr. Foreman and Gentlemen of the Jury: The time is shortly to arise when the issues which have been raised by the charge laid against these defendants, will be submitted to you for your consideration and determination.

You have exhibited a great patience and have listened, I think, with unusual attention to the presentation of the evidence introduced by the Government and in behalf of the defendants, with an evident appreciation of the serious charge made by the Government and of the equally serious character of the contention made on behalf of the defendants with respects to the true facts in this case.

Congress has seen fit to pass legislation having to do with the regulation of traffic in habit-forming drugs. The constitutionality of that legislation has been approved by the Supreme Court of the United [fol. 751] States, so you need have no concern with the soundness of the Government's contention that there is a valid law upon the Statute books, which it is claimed the defendants conspired to break.

You will bear carefully in mind, gentlemen, that the charge which you are to consider here, and the only charge, is that there was an agreement between all of the defendants to violate a law of the United States. It is claimed by the Government that these five defendants entered into an arrangement between themselves, known to the law as a conspiracy, by which they mutually agreed that they would violate the statute passed by Congress, and would together sell habit-forming drugs known as heroin and cocaine without their having the right to do so by proper registration, as provided by law. Now, gentlemen, a conspiracy is an agreement or combination or understanding between two or more people either to do an unlawful act or to do any act, lawful or unlawful, in an illegal manner.

You must bear in mind that there can be no conspiracy unless there are at least two parties thereto and that a conspiracy by no means indicates a written agreement between the parties to it; or even any oral arrangement between them; that is to say, conspirators need not meet and talk over their plans; they need never see each other. It is quite sufficient, if the jury finds that the Government has established that the minds of all whom the Government charged, as having been members of the conspiracy, met for the purpose of effecting their common purpose. You must also bear in mind that even if you find that the minds of any two or more or all of the defendants met, for the purpose of effecting their illegal end, you [fol. 752] cannot convict any of the defendants, except you find that

the Government has proved an overt act, so-called. An overt act is something done by one or more of the defendants, for the purpose of carrying out the object of the conspiracy.

It is claimed by the Government that four overt acts were committed, but you need not find that the Government has established that four overt acts were committed in order to find these defendants guilty. It is sufficient that the proof has satisfied you that any one of the four acts was in fact committed, and these are the alleged acts in question:

(1) That during the continuance of the conspiracy and for the purpose of effecting its object, the defendants and each of them had in their possession a large quantity of heroin and cocaine, as above stated;

(2) That during the continuance of the conspiracy, for the purpose of effecting its objects, the defendants, and each of them, solicited the sale of heroin and cocaine and made arrangements to sell the same;

(3) That during the continuance of the conspiracy and for the purpose of effecting its object, the defendants, and each of them, met in the house of Stephen Alba, at 138 Union Street in the Borough of Brooklyn, County of Kings, City and State, Eastern District of New York, made arrangements for the purpose of selling said cocaine and heroin;

(4) That during the continuance of the conspiracy and for the purpose of effecting its object, the defendants and each of them [fol. 753] brought a large quantity of heroin and cocaine at 138 Union Street, Borough of Brooklyn, City and State of the Eastern District of New York, and sold same in violation of the Act of December 17th, 1914, commonly known as the Harrison Act.

When the charge is made that the defendants here brought a large quantity of drugs, or had in their possession, it does not mean that the Government must prove that each one had upon his person or individually and physically brought the drugs. It is sufficient if the Government proves that they came together there, actuated by a common purpose, even if one of them or two of them only actually carried the drugs or acted as spokesmen when the negotiations for the alleged sale were carried on.

There are certain general rules, gentlemen, by which you must be guided in your consideration of the testimony. There is the presumption of innocence, to which every defendant accused of crime is entitled, and that presumption must be given full weight by you. Here the presumption existed at the outset of the trial in favor of each of the five defendants, and continued throughout for the benefit of each, until such point should come during the trial, if it arrived at all, when you jurors are able to say that the Government has satisfied you beyond a reasonable doubt that each one of the defendants, or any definite number of them has been proven guilty on this charge, as outlined by the Court.

The Government is required to do more, in order to justify your rendering a verdict of guilty than to establish its contention by a mere [fol. 754] preponderance of the evidence. It must prove each defendant, whose guilt you determine to be established, must prove each defendant guilty beyond a reasonable doubt. But you gentlemen are not to put any forced or strained construction upon the expression "Beyond a reasonable doubt." It does not mean that the Government must prove the defendants, or any of them, guilty beyond all possible doubt, but the words are to be given their natural meaning and no more.

A defendant placed on trial is not required to take the stand and testify in his own defence, so the failure of some of the defendants here charged, to testify, must not be allowed by you to work to their prejudice. You must not permit yourselves to indulge in any speculation with respect to what their testimony would have been, and to allow any one of them to have an unfavorable consideration in this case by you because of the failure to testify.

2. Now, with respect to the evidence, gentlemen, very briefly you will remember that the Government charges that with the aid of two men, Italians by birth or by descent, the Internal Revenue Agents ascertained that a great traffic in drugs was going on in South Brooklyn, and that some of those connected with that traffic showed themselves to be ready and willing to extend their operations therein and allow agents of the Government to purchase from them the prohibited article; that as the result of what these men, who are employed by the Government agents, ascertained, they went to the premises at Number 138 Union Street on the evening of January 16th of this year and there met two of the defendants, one of them having his home there and that later the other defendants joined them, that [fol. 755] a very substantial sum of money was paid over to one of the defendants for the drug in question in the presence of all of the defendants, and with that consummated, the agents who had been stationed in the neighborhood of the house in question, broke in and found the money which one of the Government's representatives had paid the defendant Alba, in Alba's possession.

yes Now, if you believe the testimony so offered, it will permit you, if you believe that you should do so, to find that all of the defendants are guilty of the crime of conspiracy to violate the Harrison Law so-called.

If, however, you find that any of the defendants were present in the premises at the time that the alleged sale was consummated and the money paid and that they were ignorant of what was in the minds of the other defendants, and that they had no idea that any such offence was planned by any of the defendants, then you will acquit such of the defendants, if any, as you find had no knowledge of the illegal plan. The mere presence of any one at the scene of a crime is not necessarily proof that that individual is a party thereto, but his presence must be taken into account by a jury and such weight given to it, coupled with all of the surrounding circumstances as the facts justify it. If an explanation is offered in behalf of his, as he claims,

innocent presence there, it is for the jury to determine how reasonable that explanation is.

In this case, with respect to the defendant Frank Agnello, the jury must consider carefully whether the testimony offered in his behalf is [fol. 756] that which reasonable men should accept either as true, or throwing sufficient doubt on the transactions, to justify acquittal.

You will remember that young Agnello stated that one of the defendants, Centorino, had given him a package which the testimony showed was neither large or heavy, and he asked him to take that package to premises a short distance away. It is for you to determine whether it is likely that an occurrence would have happened in that way, without his ascertaining more regarding the contents of the package, particularly when the record shows that the package was opened and was found to contain a number of small parcels, which the defendant Centorino stuffed into various pockets of the defendant Agnello.

Now, it is for you to determine whether an occurrence can reasonably be said to have happened in that way and still Frank Agnello to have been innocent of the character of what he was asked to convey a short distance for his friend, Centorino.

It is also for you to determine whether or not it is reasonable to believe that the defendants, Thomas Agnello and Pace would have gone into Alba's home for the reasons as given in their behalf, and would have remained there during the passage of money to the defendant Alba, if you believe the Government's testimony that the money was passed and was found on Alba, without doing something more than simply remain there, and still ask you to believe that they were innocent bystanders or innocent onlookers. The testimony in this case, gentlemen, must be scrutinized by you with the care justifying its importance. You will have to determine, of course, which [fol. 757] witnesses are to be believed, because the defence, as you will remember, is that the Government's agents, finding that none of the defendants would violate the law by having anything to do with cocaine, endeavored to entice, trick, lure and entrap one or more of the defendants, so that they would in that way be able to lodge a technical charge of law violation against them. It is for you to determine to what extent that testimony is to be believed.

You are especially to bear in mind, gentlemen, that it is not whether a party to a litigation produces more witnesses than the other party which justifies your believing his version of it, but which side produces the better quality of testimony. The kind of witnesses whose appearance, whose attitude, whose manner of giving their testimony, justifies the jury in accepting that, even if it be the testimony of fewer witnesses, rather than the testimony of the party who brings a large number, who are of the type that the jury, after listening, find that they cannot accept, save with the greatest difficulty. The Court has not suggested that that applies as to the prosecution or defence in this case, but believes the jury should be instructed specifically with respect to the care and the discrimination that they should use in determining what testimony carries weight of the most

convincing force, without regard to whether it is given by a greater or larger number of witnesses.

If you find in this case, gentlemen, that any witness has attempted to mislead you on a material fact, you are then justified, if you so determine, in rejecting all or any part of the rest of the testimony given by that witness.

One of the Government witnesses, Nunzio, testified that he lived [fol. 758] at a certain addresses. It was proved later that the testimony upon that point was untrue. Now, the witness was permitted to give his explanation. It is for you to determine, after hearing that explanation, whether you would be justified in saying that you will disregard everything that he said, because he testified that he thought it would be dangerous for him to give his real residence, if you accept that as true.

You must bear in mind that the Government does not rest its case only upon the testimony given by that witness or upon the testimony given by the other Italian, who posed as the purchaser of the drugs. There is the testimony of the agents as to what they found going on in the room of Alba's house when they broke in, and that the marked money was found in the possession of Alba. That testimony is for you to consider and determine what it establishes.

If you find that the Government has made out its case and presented proof here sufficient to satisfy you that all of the defendants were members of the alleged conspiracy, and that one or more of the overt acts, which the Court has been reading to you, has been proved, all of this beyond a reasonable doubt, then, gentlemen, your verdict must be guilty, without regard to any other consideration. With the question of the penalty to follow a conviction, the jury has no concern, because that is the responsibility that must rest with the Court.

Likewise, gentlemen, if you find that the Government has failed to establish its contentions as included in the charge in the indictment here, against any one or all of these defendants, with respect to their [fol. 759] participation in the conspiracy, then it would be your duty to return a verdict of not guilty against one, two, three or all of such defendants, if you find that the Government has failed to prove.

Now, the Court has been requested in behalf of the defendant Frank Agnello, to make these specific charges:

If the jury should find that there is a conspiracy they must then find that it was an illegal conspiracy.

I so charge.

The jury must find that the defendants at the time that they are alleged to have conspired, must have agreed that when that sale was being made, they would not register with the Collector.

The Court so charges with the understanding that the agreement need not be in writing, or need not be by word of mouth, but simply by a meeting of the minds.

The Court is requested to charge that if the jury find a conspiracy, in order to find an illegal one, they must find that at the time of the agreement, each knew that the other was not registered and did not intend to.

I so charge.

The Court is requested to charge that it is no crime to conspire to sell without being registered; the crime of conspiracy must be found to be a sale without being registered.

I decline to so charge. The illegal act, gentlemen, was not in the sale, but it was in an agreement that they should make a sale illegally.

Mr. Wackerman: May I have an exception?

The Court: Yes. The Court is requested to charge that the selling charge was dismissed; that as to the selling charge that was dismissed [fol. 760] the jury must disregard all the evidence that at the time of the sale the defendants were not registered.

I so charge, because the crime, if it is proved, was in the meeting of the minds before the sale.

The Court is requested to charge that the Harrison Act makes owning and selling without being registered a crime.

The Court so charges, but that is not the alleged crime which you are to consider; you are only to consider the charge of a crime about violating the law.

Now, the Court is requested in behalf of the defendant Centorino, to charge from an opinion in the case of Butts vs. The United States, and that is with respect to the contention on the part of the defendants that because the Government sent its two paid employees to certain of the defendants and asked them if they would make a sale of the drug, that that was an illegal act on the part of the Government which justifies your acquitting all of the defendants. Now, please pay particular attention to this request to charge, and what follows by the Court.

The Court is requested to charge as follows: "The first duty of the officers of the law is to prevent not to punish crimes. It is not their duty to incite and create crime for the sole purpose of prosecuting and punishing it. Here the evidence strongly tends to prove, if it does not conclusively do so, that their first and chief endeavor was to cause and create crime in order to punish it and that is unconscionably contrary to public policy and the established law of the land to punish a man for the commission of an offense of the like of which he had never been guilty, either in thought or in deed and never would [fol. 761] have been guilty of it if the officers of the law had not conspired, incited, pursued and lured him to attempt to commit it, and it was fatal error to refuse to instruct the jury as requested."

Now, gentlemen, with respect to that request, the Court will not charge it as requested. Those observations were made by a Court with reference to another case of a totally different state of facts. What the Court will charge is this: that the first duty of the officers of the law is to prevent, not to punish crime. It is not their duty to incite and create crime for the sole purpose of prosecuting and punishing it.

The Court does not charge you that in this case the evidence strongly tended to prove that the first and chief endeavor of the Government witnesses, or any of them, was to create or incite crime. That, gentlemen, is a contention which the defendants advanced, and it is for you to determine whether or not it is true, as disclosed by

the evidence, because if you find that the Government establishes that these defendants are all men to whom any traffic in drugs was repugnant, or who shrank from the thought of having anything to do with the heroine or cocaine, and that in spite of that the agents of the United States or any one employed by them, continued to urge the defendants, or any of them, to break this law, and over the defendants' expressed desire not to break the law, the Government agents finally carried their incitations to the point where they got the defendants, unwilling in themselves, to violate the law, you may take that into account. If you find that there was any such action on the part of the Government, with such an attitude of mind by [fol. 762] the defendants, you are justified in acquitting.

Now, are there any additional requests?

Mr. Kesselman: Your Honor has the charge of good character.

The Court: Yes, you are to take into account, gentlemen, the testimony offered in behalf of the various defendants, relating to the character of each concerning whom the witnesses testified. If you find the testimony to be so close in this case that you cannot say whether the defendants have been proven guilty or innocent, you would have to acquit in any event, because the Government must establish their guilt beyond a reasonable doubt; so, if you find that there is any difficulty in reaching a conclusion that the Government has established a reasonable doubt by the testimony concerning the alleged crime, then you may take into account the character witnesses of the defendants, and give that testimony such credence and weight as you believe justified.

Mr. Kesselman: I except to your Honor's charge on the question of good character, and I ask your Honor to charge the jury—

The Court: In what particular?

Mr. Kesselman: On the ground that your Honor has not correctly stated the law of good character. I will give some requests on that.

The Court: Very well, please do.

Mr. Price: I ask your Honor to charge the jury that if the jury find from the evidence in this case that the defendant Centorino did not have the means of committing the crime, that the means were furnished by the witness Nunzio, they must acquit the defendants.

The Court: What do you mean, "the means"?

[fol. 763] Mr. Kesselman: The cocaine.

The Court: The cocaine? I so charge. Of course the Government theory of the case is—

Mr. Price: May I have those statements?

(Court hands counsel papers.)

The Court: Yes, the Court will modify the charge, and so charge and state to the jury that the Government's contention is that the cocaine in this case came from the defendants and not from any Government agent.

Mr. Price: I ask your Honor to charge the jury that if the jury have a reasonable doubt on that phase of the case, as to whether or

not the cocaine was furnished by the witness Nunzio, it is jury's duty to take that into consideration and acquit the defendants.

The Court: Why, not only must they take that into consideration, but they must acquit the defendants, because the whole case—

Mr. Brancato: I concur in that request, if the Court please.

Mr. Price: I ask your Honor to charge the jury that good character may in itself create a reasonable doubt when otherwise no reasonable doubt would exist.

The Court: I so charge.

Mr. Price: I ask your Honor to charge the jury that evidence of good character is to be considered as an absolute probative fact bearing directly on the question of the guilt or innocence.

The Court: I so charge.

Mr. Price: No matter how conclusive and positive the other evidence against the accused may be, the jury must consider it and give it weight.

The Court: I so charge.

Mr. Price: I ask your Honor to charge the jury that before the [fol. 764] jury can find the defendants guilty, they must find that they acted with criminal intent; that if the facts charged are susceptible of two constructions, one of criminal intent and the other of innocent intent, the jury must find that the defendants acted with innocent intent, and acquit them.

The Court: I so charge.

Mr. Price: I ask your Honor to charge the jury that the fact that you denied the motions of counsel at the end of the entire—at the close of the Government's case and at the end of the entire case, to direct a verdict of not guilty, is no evidence of the fact that your Honor has any opinion in this case whatsoever, but it is just a legal determination, and says to the jury in substance that there is a question of fact for them to decide.

The Court: I so charge.

Mr. Price: I ask your Honor to charge that mere probabilities are not sufficient to warrant a conviction—or is it sufficient that the greater weight or preponderance of evidence supports the allegations of the indictment, nor is it sufficient upon the doctrine of chance that it is more probable that the defendants are guilty than innocent.

To warrant a conviction the defendants must be proved to be guilty so clearly and conclusively that there is no reasonable theory upon which they can be innocent from the evidence in the case, and if the Government has failed to make such proof, the jury must find the defendant not guilty.

The Court: I so charge.

Mr. Price: I think that is all.

[fol. 765] Mr. Wackerman: I except to so much of your Honor's charge as stated to the jury that these defendants were charged with the crime of conspiring to sell habit-forming drugs without having the right to do so. I ask your Honor to charge the jury that these defendants are charged with a crime, in the language of the indictment, as agreeing to sell a large quantity of heroin, which is a

derivative of opium and cocaine, which is a derivative of coca leaves, without first having registered with the Collector of Internal Revenue Department.

The Court: The part of the charge to which objection is made is withdrawn and the jury is now charged as requested by the defendants.

Mr. Wackerman: Now, I ask your Honor to instruct the jury to find a verdict of not guilty as against these defendants, on the ground that there is no evidence upon which the jury can find the defendants guilty, for your Honor has just charged them to disregard all evidence as regards the defendants being registered. The crime with which these defendants are charged is selling cocaine without having first been registered.

The Court: Perhaps I misunderstood.

Mr. Wackerman: May I see my requests to charge?

(Paper handed to counsel.)

Mr. Wackerman: I will withdraw that motion for the time being and make this request to your Honor to charge.

The Court: Very well.

Mr. Wackerman: I request the Court to charge that as the charge of selling heroin and cocaine was dismissed, as the sec-[fol. 766] ond count in the indictment was dismissed, that the jury would have to disregard all evidence that the defendants were not registered with the Collector of Internal Revenue, for the Harrison Act only makes the fact and the act of registering a necessity and the fact of not doing so criminal, when a consummated sale is made. Unless there is proof of a sale, there is no necessity or requirement made for the defendants to register. I ask your Honor to so charge the jury.

The Court: I charge the jury that the Government claims that the violation of law where involved is a crime between all of the defendants to violate the Harrison law. The Harrison law provides that any person selling cocaine or heroin must be registered with the Collector of Internal Revenue and pay a tax.

Mr. Wackerman: I except.

Mr. Kesselman: I except to that portion of your Honor's charge wherein you said, "great traffic in drugs was going on in South Brooklyn."

The Court: The exception is sustained. That part of the charge is withdrawn. There is no evidence in the case to justify it. The jury will disregard the statement by the Court to that effect.

Mr. Brancato: I ask your Honor to charge the jury that the fact of the dismissal of the second count was not based upon any failure of proof on the part of the Government, but rather upon a stenographic mistake, in that the word "Brooklyn" was not contained in the indictment.

The Court: I do not know about the stenographic mistake, but it was a mistake in the indictment.

[fol. 767] Juryman Number Twelve: Can we regard anything even though it may not be brought out in evidence?

The Court: Everything in the case is to be taken into consideration, but nothing not brought out in the evidence. You can send for what you want after lunch.

Mr. Price: I have no objection—I do not want it misunderstood—they may take everything, but I do not want anything in there where anybody has put any memorandum on.

The Court: That is perfectly correct. Be very careful, Mr. Scott, that you take off everything that was attached thereto after the time that the Government claims that they were seized by Government Agents.

The Jury retired at 1 o'clock and returned at 3:10 P. M.

(The Jury brought in the following verdict: "We find each defendant guilty of conspiracy in the indictment as charged.")

Mr. Wackerman: Will your Honor give us twenty-four hours to move for an arrest of judgment?

The Court: Why not now?

Mr. Wackerman: I can make my motions now, except I do not know what Mr. Kesselman or Mr. Price want.

(Mr. Price and Mr. Kesselman not in Court at this time).

The Court: Spread upon the record your motions.

Mr. Wackerman: Yes. I move an arrest of judgment on the ground first that in the indictment as charged, these defendants could not have been found guilty of conspiracy for the reason that [fol. 768] the indictment charges them with conspiring without being registered, which is not a crime, and charges that the defendants conspired to sell, and the Harrison Act does not make that a crime. The only crime specified in the Harrison Narcotic Act is the crime of selling without being registered at the time the sale is made.

The Court: Motion denied.

Mr. Wackerman: Exception.

I move to set aside the verdict and move for a new trial.

The Court: Motion denied.

Mr. Wackerman: Exception.

The Court: Now, Mr. Price, the jury has returned a verdict of guilty as to each one of the five defendants. Mr. Wackerman has placed upon the record a motion to set aside the verdict and for a new trial and an arrest of judgment.

Mr. Price: Yes, on the ground that the indictment does not state facts sufficient to constitute a crime.

The Court: That is your motion. Motion denied.

Mr. Price: Exception.

I move to set it aside as contrary to law and contrary to the evidence and all the exceptions taken during the trial, also in arrest of judgment on the ground that the indictment does not state facts sufficient to constitute a crime.

The Court: Motion denied.

Mr. Price: Exception.

The Court: Have you anything to say in behalf of the defendant

that you represent or any other defendant, as to why there should be any discrimination?

[fol. 769] Mr. Price: I think your Honor should adjourn sentence.

The Court: I am going to sentence them right now. Have you the authority to spread upon the record motions in behalf of each one of the defendants?

Mr. Price: No, I am moving for Centorino.

The Court: Only? And Mr. Wackerman is moving for Frank Agnello?

Mr. Price: I move your Honor to set aside sentence for a few days.

The Court: Oh, no.

Mr. Price: I make a motion on behalf of all the defendants.

The Court: Very well. Let that appear in the record, for all of the defendants. Motion denied. Exception to each one of them.

The judgment of the Court in the case of United States against Agnello and others is that each defendant be committed to the Federal Penitentiary at Atlanta, for the term of two years and that each defendant pay a fine of five thousand dollars.

Case closed.

[fol. 770] IN UNITED STATES DISTRICT COURT

ORDER SETTLING BILL OF EXCEPTIONS

This is to certify that the foregoing Bill of Exceptions tendered by the defendants is correct in every particular and is hereby settled and allowed and made a part of the record in this cause.

Dated, November —, 1922.

Edwin L. Garvin, United States District Judge.

IN UNITED STATES DISTRICT COURT

STIPULATION RE BILL OF EXCEPTIONS

It is hereby stipulated and agreed by and between the parties that the foregoing Bill of Exceptions is correct in every particular and that it may be duly signed, settled and allowed by the Hon. Edwin L. Garvin, the Trial Judge in this case.

Ralph C. Greene, United States Attorney. O'Gorman, Battle, Vandiver & Levy, Attorneys for Defendants.

[fol. 771] IN UNITED STATES DISTRICT COURT

ORDER OF CIRCUIT COURT OF APPEALS AND CONSENT WAIVING
PRINTING OF EXHIBITS

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA, ANTONIO
CENTORINO, and JAMES PACE, Plaintiffs-in-Error (Defendants
Below),

against

UNITED STATES OF AMERICA, Defendant-in-Error (Plaintiff Below).

On reading and filing the annexed consent, it is

Ordered that the printing of the exhibits in the above entitled
cause be, and the same hereby is dispensed with, and the original
exhibits may be used and referred to by either party upon the argu-
ment of the Writ of Error.

Oct. 30, 1922.

Henry Wade Rogers, Judge United States Circuit Court.

[fol. 772]

[Title omitted]

It is hereby consented that the foregoing order dispensing with
the printing of the exhibits in this cause and allowing the use and
the reference to the original exhibits upon the argument of Writ of
Error, be made and entered.

Dated, New York, October 26th, 1922.

Ralph C. Greene, United States Attorney. O'Gorman, Bat-
tle, Vandiver & Levy, Attorneys for Plaintiffs-in-Error.

[fol. 773]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

And come the plaintiffs-in-error, by Abraham H. Kesselman,
their attorney, and make and file the following assignment of errors:

First: That the indictment upon which the plaintiff-in-error were
tried and convicted is insufficient and contrary to the requirements
of the law in such cases made and provided.

Second. That the Court erred in admitting exhibits and testimony
concerning the same which were taken without warrant or due
process of law.

Third. That the Court erred in denying the motion to strike out such exhibits and the testimony concerning the same.

Fourth. That the Court permitted incompetent, immaterial and irrelevant testimony and exhibits and testimony which were illegally obtained and seized to be introduced in evidence over the objection and exception of the plaintiffs-in-error.

Fifth. That the Court erred in denying the motion to dismiss the [fol. 774] indictment and discharge the plaintiffs-in-error upon the ground that the Government had failed to prove a case.

Sixth. That the Court erred in denying the motion to set aside the verdict of the jury upon the ground that the same was contrary to law and contrary to the evidence and against the weight of evidence and upon all the exceptions taken during the trial.

Abraham H. Kesselman, Attorney for Plaintiffs-in-Error.

Office and P. O. Address, 215 Montague Street, Brooklyn, N. Y.

[fol. 775] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER STAYING EXECUTION AND FIXING BAIL

Upon the motion of Abraham H. Kesselman, attorney for the plaintiffs-in-error, and it appearing that an order has been made herein allowing the issuance of a writ of error and that a writ of error and citation returnable in this Court on the 23rd day of April, 1922 has been duly issued herein by the Honorable Thomas I. Chatfield, United States District Judge for the Eastern District of New York, upon the petition of the plaintiffs-in-error and the filing of the assignments of error and on consideration of the application it is

Ordered that the execution of the commitment and the sentence be stayed pending the hearing and determination of the appeal herein, and it is further

[fol. 776] Ordered that Thomas Agnello, Frank Agnello, Stephen Alba, Antonio Centerino and James Pace, be admitted to bail upon giving bonds in the sum of ten thousand dollars respectively pending their appeal, and conditioned that the plaintiffs-in-error shall abide the judgment of the Circuit Court of Appeals on said appeal and surrender themselves in the United States District Court for the Eastern District of New York when required at the determination of the appeal and shall appear and report to this Court for the purpose of such direction on the 3rd day of May and from time to time and term to term thereafter as directed by the Court and abide the order of this Court and not depart from the same without leave.

Thomas I. Chatfield, Judge of the United States District Court for the Eastern District of New York

[fol. 777] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR STAY

CITY OF NEW YORK,
State of New York,
County of Kings, ss:

Abraham H. Kesselman, being duly sworn, deposes and says:

That he is the attorney for the plaintiffs-in-error.

That said plaintiffs-in-error were convicted on March 21, 1922 after a trial before the Hon. Edwin L. Garvin and a jury on a charge of conspiracy arising out of agreement to unlawfully sell certain narcotics, to wit: heroin and cocaine.

That upon said conviction plaintiffs-in-error were sentenced to be imprisoned in the Federal Penitentiary at Atlanta, Ga., for a term of two years and to pay a fine of five thousand dollars (\$5,000).

That an order allowing the issuance of a Writ of Error and extending the term for the period of (90) days from March 23, 1922, was duly signed by the Hon. Thomas I. Chatfield, District Judge in the Eastern District of New York, on March 23, 1922.

That on the same day a Writ of Error returnable on the 23rd day of April, 1922, in this Court was allowed by the said Judge and at [fol. 778] tested by the Clerk of the Court upon the petition of the plaintiffs-in-error to the assignments of error filed therewith, and a citation returnable on the same day was also issued by Judge Chatfield.

That deponent verily believes that error has been committed in the trial and for that reason the appeal is being taken.

Deponent submits that unless a stay of execution of the commitment is granted and the plaintiffs-in-error permitted to give bail a great hardship will be worked on them for the reason that an appeal herein can probably not be brought on before the June Term, and in the meantime the plaintiffs-in-error will be in prison.

That a commitment has been issued to the Marshal and that the plaintiffs-in-error will be removed to their respective places of imprisonment before the end of this week.

For that reason deponent asks that an order staying the execution of the commitment and sentence be made and that bail be fixed pending the appeal.

The Assistant United States Attorney who had charge in this case and tried the same has consented that bail be fixed in the sum of ten thousand dollars for each of the plaintiffs-in-error, and deponent asks that the same amount of bail be fixed by the Court.

No previous application for the relief herein asked for has heretofore been made, except as aforesaid.

Abraham H. Kesselman.

Sworn to before me this 23rd day of March, 1922. John H. Leavins, Notary Public. Register's No. 3085. Certificate filed in Kings County. Commission expires March 30, 1923. Certificate filed in Kings County Clerk's Office No. 9. (Seal.)

[fol. 779] CITATION—In Usual form; omitted in printing

[fol. 780] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDERS EXTENDING TERM

Whereas, the above named plaintiffs-in-error have sued out a Writ of Error to the United States Circuit Court of Appeals for the Second District, and have served a citation upon the United States of America and have duly filed assignments of error on or about the 23rd day of March, 1922, and

Whereas, by an order of this Court, made and entered on the 23rd day of March, 1922, said plaintiffs-in-error were given ninety (90) days from March 21, 1922, for the purpose of permitting them to file amended assignments of error and to perfect and file their bill of exceptions to the appeal herein,

[fol. 781] Now, on motion of O'Gorman, Battle, Vandiver & Levy, attorneys for the Plaintiffs-in-Error, it is

Ordered, that the March, 1922, Term of this Court be extended from March 21, 1922, to October 4, 1922, for the purpose of permitting the Plaintiffs-in-error to file their amended assignments of errors with the Clerk of this Court and to serve a copy of same upon the United States Attorney for the Eastern District of New York, such amended assignments of errors shall be inserted in the transcript of the record in the place and stead of the assignments of errors filed on or about the 23rd day of March, 1922, and

It is further ordered that the time for the Plaintiffs-in-Error to perfect and settle their bill of exceptions herein, and to file their transcript of record and the return day of the citation be extended to and included October 4, 1922, and the March, 1922, term of the Court is extended to that date, for all such purposes.

Edwin L. Garvin, United States District Judge.

I hereby consent to the entry of the above case.

Dated, New York, June 5, 1922.

Ralph C. Greene, United States Attorney.

[fol. 782]

[Title omitted]

Whereas, the above named plaintiffs-in-error have sued out a Writ of Error to the United States Circuit Court of Appeals for the Second District, and have served a citation upon the United States of America and have duly filed assignments of error on or about the 23rd day of March, 1922, and

Whereas, by an order of this Court, made and entered on the 23rd day of March, 1922, said plaintiffs-in-error were given ninety (90) days from March 21, 1922, for the purpose of permitting them to file amended assignments of error and to perfect and file their bill of exception to the appeal herein, and

[fol. 783] Whereas by an order of this Court made and entered on or about the 5th day of June, 1922, the March, 1922, Term of this Court was extended to October 4, 1922, for the purpose of permitting the Plaintiffs-in-error to file their amended assignments of error with the Clerk of this Court and to serve a copy of the same upon the United States Attorney for the Eastern District of New York, such amended assignments of error to be inserted in the transcript of the record in the place and stead of the assignments of error filed on or about the 23rd day of March, 1922, and

Whereas, it was further ordered by the aforesaid order made and entered on or about the 5th day of June, 1922, that the time for the plaintiffs-in-error to perfect and settle their bill of exceptions herein and to file their transcript of record and that the return day of the citation be extended to and including the 4th day of October, 1922, and the March, 1922, Term of the Court be extended for all such purposes to the 4th day of October, 1922.

Now, on motion of O'Gorman, Battle, Vandiver & Levy, attorneys for the plaintiffs-in-error, it is

Ordered, that the March, 1922, Term of this Court be extended from March 21, 1922, to November 3, 1922, for the purpose of permitting the plaintiffs-in-error to file their amended assignments of errors with the Clerk of this Court and to serve a copy of same upon the United States Attorney for the Eastern District of New York such amended assignments of errors to be inserted in the transcript of the record in the place and stead of the assignments of errors filed on or about the 23rd day of March, 1922, and

[fol. 784] It is further ordered that the time for the Plaintiffs-in-error to perfect and settle their bill of exceptions herein and to file their transcript of record and the return day of the citation be extended to and including November 3rd, 1922, and the March, 1922, Term of the Court is extended to that date for all such purposes.

Edwin L. Garvin, United States District Judge.

I hereby consent to the entry of the above case.

Dated, New York, September 25, 1922.

Ralph C. Greene, U. S. Attorney.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED ASSIGNMENTS OF ERRORS

The plaintiffs-in-error, by leave of Court, pursuant to order duly made, do make and file the following amended assignments of errors.

First. The Court erred in denying the motion in arrest of judgment on the ground that the indictment does not state facts sufficient to constitute a crime.

[fol. 785] Second. That the Court erred in admitting over objection and exception evidence obtained by unlawful search and seizure.

Third. That the Court erred in denying the motion made to withdraw a juror and to declare a mistrial by reason of improper remarks of the Assistant United States Attorney during the course of the trial and during the summing up.

Fourth: That the Court erred in admitting testimony over objection and exception of statements made by Thomas Agnello after his arrest.

Fifth. That the Court erred in admitting testimony over objection and exception of the possession or smuggling of cocaine by the defendant Alba.

Sixth. That the Court erred in directing that the witness Nunzio should not be required to testify to his address.

G'Gorman, Battle, Vandiver & Levy, Attorneys for Plaintiffs-in-Error.

O. & P. O. Address, 37 Wall Street, Borough of Manhattan, New York City.

[fol. 786] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed by and between the parties that the foregoing is a true copy of the transcript of record of the said District Court in the above entitled matter as agreed on by the parties.

Dated November —, 1922.

Ralph C. Greene, United States Attorney. O'Gorman, Battle, Vandiver & Levy, Attorneys for Defendants.

[fol. 787] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLERK'S CERTIFICATE

I, Percy G. B. Gilkes, Clerk of the District Court of the United States of America for the Eastern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Eastern District of New York, this — day of November, in the year of our Lord One thousand nine hundred and twenty-two.

Percy G. B. Gilkes, Clerk.

[fol. 788] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA, ANTONIO
CENTORINO, and JAMES PACE, Plaintiffs-in-Error (Defendants
Below)

against

THE UNITED STATES OF AMERICA, Defendants-in-Error (Plaintiffs
Below)

Before Rogers, Hough and Manton, Circuit Judges

O'Gorman, Battle, Vandiver & Levy, for Plaintiffs-in-Error.

George Gordon Battle, Isaac H. Levy, George C. De Lacy, of
Counsel.

Ralph C. Greene, United States Attorney for the Eastern District
of New York; Henry J. Walsh, Assistant United States Attorney,
of Counsel.

OPINION

This cause comes here on writ of error to the United States District Court for the Eastern District of New York.

ROGERS, Circuit Judge:

The defendants have been convicted under an indictment which charged them with the crime of conspiracy to commit the offence [fol. 789] of selling heroin and cocaine without having registered or paid the tax prescribed and in violation of the Act of December 17, 1914, (38 St. ch. 1, p. 785) as amended by Sections 1006, 1007 and 1008 of the Revenue Act of 1918, (40 St. ch. 18, pp. 1057,

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED ASSIGNMENTS OF ERRORS

The plaintiffs-in-error, by leave of Court, pursuant to order duly made, do make and file the following amended assignments of errors.

First. The Court erred in denying the motion in arrest of judgment on the ground that the indictment does not state facts sufficient to constitute a crime.

[fol. 785] Second. That the Court erred in admitting over objection and exception evidence obtained by unlawful search and seizure.

Third. That the Court erred in denying the motion made to withdraw a juror and to declare a mistrial by reason of improper remarks of the Assistant United States Attorney during the course of the trial and during the summing up.

Fourth: That the Court erred in admitting testimony over objection and exception of statements made by Thomas Agnello after his arrest.

Fifth. That the Court erred in admitting testimony over objection and exception of the possession or smuggling of cocaine by the defendant Alba.

Sixth. That the Court erred in directing that the witness Nunzio should not be required to testify to his address.

G'Gorman, Battle, Vandiver & Levy, Attorneys for Plaintiffs-in-Error.

O. & P. O. Address, 37 Wall Street, Borough of Manhattan, New York City.

[fol. 786]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed by and between the parties that the foregoing is a true copy of the transcript of record of the said District Court in the above entitled matter as agreed on by the parties.

Dated November —, 1922.

Ralph C. Greene, United States Attorney. O'Gorman, Battle, Vandiver & Levy, Attorneys for Defendants.

[fol. 787] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLERK'S CERTIFICATE

I, Percy G. B. Gilkes, Clerk of the District Court of the United States of America for the Eastern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Eastern District of New York, this — day of November, in the year of our Lord One thousand nine hundred and twenty-two.

Percy G. B. Gilkes, Clerk.

[fol. 788] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA, ANTONIO
CENTORINO, and JAMES PACE, Plaintiffs-in-Error (Defendants
Below)

against

THE UNITED STATES OF AMERICA, Defendants-in-Error (Plaintiffs
Below)

Before Rogers, Hough and Manton, Circuit Judges

O'Gorman, Battle, Vandiver & Levy, for Plaintiffs-in-Error.

George Gordon Battle, Isaac H. Levy, George C. De Lacy, of
Counsel.

Ralph C. Greene, United States Attorney for the Eastern District
of New York; Henry J. Walsh, Assistant United States Attorney,
of Counsel.

OPINION

This cause comes here on writ of error to the United States District Court for the Eastern District of New York.

ROGERS, Circuit Judge:

The defendants have been convicted under an indictment which charged them with the crime of conspiracy to commit the offence [fol. 789] of selling heroin and cocaine without having registered or paid the tax prescribed and in violation of the Act of December 17, 1914, (38 St. ch. 1, p. 785) as amended by Sections 1006, 1007 and 1008 of the Revenue Act of 1918, (40 St. ch. 18, pp. 1057,

1132), commonly known as the Harrison Act. Each defendant has been sentenced to be imprisoned for a term of two years at Atlanta Penitentiary and to pay a fine of \$5,000.

The indictment contained two counts. The first charged the offence of conspiring to sell heroin and cocaine in violation of the Harrison Act. The second charged the actual sale of heroin and cocaine in violation of the Act. At the trial and after the testimony was in the defendants moved to dismiss the second count on the ground that it did not allege that the offence occurred within the jurisdiction. This motion was granted and the second count was dismissed as to each of the defendants.

The salient facts are few and simple. On Saturday, January 14th, the defendants Alba and Centorino were approached by two agents in the employ of the Government who stated that they desired to buy some narcotics. The agents were told to return on the following [fol. 790] Monday night. At that time they again met Alba and Centorino and were then told that the narcotics would have to be procured. They waited at the house of Alba in Brooklyn while Centorino left for the purpose of obtaining the narcotics. Centorino returned with the defendants Thomas Agnello, Frank Agnello and James Pace. Centorino placed three or four packages on the table and received from Napolitano the sum of \$350 in marked bills. There is testimony to the effect that at the time the packages were placed on the table the defendant, Pace, asked the stool pigeons if they had the money and were ready for business, and when one of them said "Yes" Frank Agnello took the packages out of his pocket and handed them to Thomas Agnello who put them on the table.

At this point the officers who had accompanied the Government's agents to the house and had been waiting on the outside and had observed through a window what took place inside, broke into the room and arrested all the defendants. There were found on the person of Frank Agnello three or four other packages containing cocaine. Thomas Agnello was taken into another room and questioned, whereupon he sought to bribe one of the agents. Following this, several of the officers went to No. 167 Columbia Street, Brooklyn, which was occupied as a grocery store and also as a residence by the Agnellos. This was the place from which Centorino, Thomas [fol. 791] Agnello, Frank Agnello and James Pace were seen by the officer to leave just after Centorino had gone there to procure the narcotics and from which they returned to the home of Alba with narcotics. On top of a wardrobe in the room occupied by Frank Agnello there was found a can containing cocaine hydrochloride which the officers took into their possession.

It is claimed that the testimony that a can of cocaine hydrochloride was found in the room of Frank Agnello was improperly admitted in evidence since it was obtained through an unlawful search. And this is the important question in the case. It seems to be admitted that the officers had the right to arrest these defendants without a warrant and had a right without a warrant to search

their persons—a crime having been committed in the officers' presence. But it is denied that the officers had any right to go from the place of the arrest to No. 167 Columbia Street, from which all the defendants but Alba were seen by the officer to emerge a short time before and from which they were supposed to have obtained the drugs which Centorino had informed the Government's agent he was going out to get and there search without a warrant the room of the defendant Frank Agnello. The question thus raised is one of great importance. May an agent of the Government in a case where he can arrest without a warrant and search the person with- [fol. 792] out a warrant, search also without a warrant the home of the person so arrested? Is such a search and seizure to be regarded as such an "unreasonable" search and seizure as violated the constitutional rights of Frank Agnello? If it constituted such a violation we must consider whether the property so seized was improperly received in evidence.

The weight of State authority holds that evidence obtained by an unconstitutional seizure is as much admissible as any other evidence secured by illegal means. *Commonwealth v. Dana*, 2 Met. (Mass.) 329; *Commonwealth v. Tibbets* 15 Mass. 519; *Chastaing v. State* 83 Ala. 29; *Scott v. State* 113 Ala. 64; *Starchman v. State*, 62 Ark. 538; *People v. Alden* 113 Cal. 264; *State v. Griswold*, 67 Conn. 290; *Williams v. State* 100 Ga. 511; *Stevison v. Earnest*, 80 Ill. 513, 517; *Trash v. People* 151 Ill. 523; *State v. Renard* 50 La. Ann. 662; *Chielt v. Rosenthal* 100 Mich. 193, 197; *State v. Pomeroy* 130 Mo. 489, 497; *State v. Atkinson* 40 S. C. 363, 371; *State v. Mathers* 64 Vt. 101; *State v. Edwards* 51 W. Va. 220. And in *Wigmore on Evidence*, vol. 3, sec. 2183, it is laid down that it has long been established that the admissibility of evidence is not affected by the illegality of the means through which the party has [fol. 793] been enabled to obtain it. And see *Harvard Law Review*, vol. 35, p. 694.

The Federal courts long followed the rule that a collateral inquiry into the mode in which evidence had been obtained would not be allowed when the question was raised for the first time at the trial. See *Adams v. New York* 192 U. S. 585; *Silverthorne Lumber Co. v. United States*, 251 U. S. 385, 392. In *Weeks v. United States* 232 U. S. 383, the court held that if an application for the return of papers unlawfully seized was made before trial and refused, and then at the trial the papers were received in evidence, over objection, the judgment should be reversed. The same doctrine was laid down in *Gould v. United States*, 255 U. S. 298. That case also asserted that an objection should be sustained and the evidence excluded although raised for the first time at the trial where the paper had been improperly seized but the defendant had no knowledge that the Government had possession of the paper until it was offered in evidence. The court said "A rule of practice must not be allowed for any technical reason to prevail over a constitutional right." In *Amos v. United States* 255 U. S. 213 it was held that if it is clear and undisputed that property used in evidence

[fol. 794] against a defendant on a criminal trial was procured by the Government through an unconstitutional search and seizure his petition for its return is not too late when made immediately after the jury is sworn, and that his motion to exclude the property and testimony concerning it from evidence should not be denied as inviting a collateral issue.

In the case at bar no application for the return of the property alleged to have been unlawfully seized was made either before or at the time of trial. But the evidence that the can was found in the room searched without a warrant was objected to when it was offered on the ground that it violated the defendant's constitutional rights in that the Government had obtained possession of it through an unlawful search and seizure. The court overruled the objection and admitted the evidence. This we think was error under the decisions in the *Gould* and *Amos* cases—if the seizure was made in violation of the constitutional provisions now to be considered. To hold otherwise would be to allow a rule of procedure to triumph over a constitutional right, and this the Federal courts cannot suffer to be done.

The Fourth Amendment to the Constitution declares that "The right of the people to be secure in their persons, houses, papers and [fol. 795] effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment declares, among other things, that no person "shall be compelled in any criminal case to be a witness against himself." And the same Article also declares that no person shall be deprived of property "without due process of law."

It may be remarked in passing as the courts have frequently pointed out that the unreasonable searches and seizures prohibited by the Fourth Amendment are almost always made to obtain evidence and thus indirectly, in a criminal case, compel a man to give evidence against himself which in that class of cases is condemned in the Fifth Amendment. The two Amendments in this respect "run almost into each other." But the historical explanation of the two Amendments is quite distinct. The Fourth Amendment can be traced to an agitation which was carried on in the eighteenth century and especially the agitation of John Wilkes and the famous decision of Lord Camden hereinafter more fully referred to. The Fifth Amendment is traced back to an agitation conducted in the sixteenth [fol. 796] and seventeenth centuries and especially to the agitation of "Freeborn John" Lilburn.

The Fourth Amendment is justly regarded as one of the most important amendments to the Constitution. It recognizes the right of the people to be secure in their persons, houses and effects against unreasonable searches and seizures. The right was not created by the Constitution. It existed as a common law right before the Constitution was adopted. The Amendment, however, established it as a constitutional right which Congress itself cannot violate. *Boyd v. United States*, 116 U. S. 616. The constitutions of the several States

generally contain the same or similar restrictions upon the powers of the governments of the States.

The framers of these constitutional provisions do not undertake to define what searches and seizures are reasonable and what unreasonable. But the intention plainly was to protect the people from unreasonable searches and seizures such as had been practiced in England under general warrants, and, to some extent, in this country in colonial times under so-called writs of assistance. Such searches and seizures the courts held illegal at common law. And the constitutional provision was designed to operate on legislative bodies so as to render ineffectual any attempt by such bodies to legalize by statute what the common law regarded as unlawful because reasonable. It was also intended to operate upon executives and courts, and to make it the duty of the courts to hold invalid every unreasonable search and seizure whether made under the guise of legislative sanction or without the color of any such sanction. *Williams v. State*, 100 Ga. 511, 520.

A search of one's person or premises with a view to the discovery of some evidence of guilt which may be used in the prosecution of a criminal action is unreasonable if it is made without authority of law. So that it becomes necessary to inquire in any particular case whether the search was made by authority of law. For it is well established that in some cases the law authorizes searches without [fol. 797] warrant, while in others searches made even under a warrant may be without authority of law. If a search is made under authority of law it is reasonable. If it is not so made it is unreasonable.

It is the general understanding that the purpose of the Fourth Amendment was to prevent any attempt by legislative or otherwise to authorize or justify any unlawful search or seizure. The restriction was intended to operate upon the executive, legislative and judicial departments of the government. But the question whether a search is reasonable or unreasonable within the meaning of the Fourth Amendment is in all cases a judicial question and no other department of the Government by any action it may take can make a search reasonable which the courts regard as "unreasonable." The Circuit Court of Appeals in the Fourth Circuit has held that the Fourth Amendment does not protect a citizen from unreasonable searches except those made or participated in by federal officers or under Federal process. *Kanellos v. United States*, 282 Fed. 461; *Kirkley v. United States*, 283 Fed. 34. And a like doctrine is asserted by the Circuit Court of Appeals in the Eighth Circuit in *Youngblood v. United States*, 206 Fed. 795. See also *United States v. Burnside*, 273 Fed. 603. In the instant case the search was made by federal agents.

The general rule is well established that there is no right to search a man's premises and seize his possessions without a search warrant, [fol. 798] and that the warrant cannot issue or if issued is invalid if the search authorized is an unreasonable one, being contrary to law.

That the right to search for and seize private papers even under

a search warrant was unknown to the common law seems conclusively shown by Lord Camden's opinion in the well known case of *Entick v. Carrington*, 19 Howell's State Trials, 1029; s. c. 2 Wils. 275, decided in 1765, in the Court of Kings Bench. This right of search and seizure under warrant had been asserted and exercised for a long time before during the arbitrary reigns of the Stuarts and for a long time afterwards. Lord Halifax, Secretary of State, accordingly claimed the right in *Entick v. Carrington*, and the matter was fully and elaborately considered by the court in that case and it was unanimously held that no such right existed, and that it was not supported "by one single citation from any law book extant." The question involved in that case was not whether the papers could be seized without a warrant for the papers had been taken under a warrant, but was whether the warrant could issue for such a purpose. Counsel claimed that the power to issue the warrant was contrary to the genius of the law of England, and that however frequently [fol. 799] they had been used since the Revolution that fact did not make them lawful, and that the practice of issuing them originated in the oppression and extortion of lords and great men, and that the custom went "no farther back than 80 years." And counsel declared "most amazing it is they have never before this time been opposed or controverted, considering the great men that have presided in the King's Bench since that time." The court held that there was no power even in the Secretary of State, to issue the warrant and that it was "wholly illegal and void." An attempt having been made by counsel to justify the seizure by referring to the practice for the search and seizure of stolen goods which was then well established Lord Camden called attention to the fact that the right of search for stolen goods had crept into English law by imperceptible practice, and that Lord Coke denied its legality. It is important too to note that in searching for stolen goods a search warrant was required and that there must be an oath by the owner that his goods have been stolen and that he has strong reason to believe they are concealed in the place to be searched. The law as laid down in *Entick v. Carrington* has been regarded ever since as settled and Lord Camden's great judgment is one of the land marks of English liberty. Justice [fol. 800] Bradley speaking of it in the Supreme Court in 1885 in *Boyd v. United States*, 116 U. S. 616, 626, said:

"It is regarded as one of the permanent monuments of the British Constitution, and is quoted as such by the English authorities on that subject down to the present time."

The use of search warrants is confined to cases of public prosecutions, instituted for the suppression of crime or the detection and punishment of criminals. In such cases their legality has long been recognized as established on the ground of public necessity. In *Adams v. New York*, 192 U. S. 585, 598, the Court said:

"The right to issue a search warrant to discover stolen property or the means of committing crimes, is too long established to require

discussion. The right of seizure of lottery tickets and gambling devices, such as policy slips, under such warrants, requires no argument to sustain it at this day."

The doubts which at one time were entertained as to the search of a man's premises for stolen goods, for lottery tickets, gambling devices and the like have not gone to the right to make the seizure without a warrant but as to whether the right existed to issue a warrant authorizing the invasion of the premises to make a search for such a purpose.

But it is interesting to observe that the courts have held that a [fol. 801] statute authorizing a magistrate or judicial tribunal to issue a search warrant which can be availed of by individuals in the course of civil proceedings is unconstitutional being in violation of the fundamental principle that every citizen is entitled to be free from all unreasonable searches of his houses and possessions. *Robinson v. Richardson*, 13 Gray (Mass.) 454. And the constitutionality of statutes authorizing the issuance of warrants to search for intoxicating liquors illegally kept for sale have been challenged in the courts. In *State v. Stoffels*, 89 Minn. 205 it was said:

"No one questions the validity of laws providing for the issuing of warrants for the search, seizure, and destruction of implements of gaming, lottery tickets, and obscene books, and other similar articles and means of crime. But it has been questioned by some courts whether intoxicating liquors are property of such character as to be subject to the application of this rule. They do not per se fall within the rule, but on principle, and the great weight of judicial authority, it must be held that when they are kept for sale in violation of the laws of the state, and are intended to be used as the subject or means of crime, it is a question solely for the lawmaking power to determine whether they ought to be subjected to the rule we have stated. Therefore statutes authorizing the issuance of search warrants to search for intoxicating liquors illegally kept for sale, and directing their seizure when found, and their forfeiture or destruction, are constitutional." See too *State v. Hanson*, 114 Minn. 136.

[fol. 802] In what has been said it appears that the common law jealously protected even against search warrants a man's immunity in his home against "the prying eyes" of government. It led *Chatham* in his speech on General Warrants to declare in a familiar passage: "The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement." And the maxim that "every man's house is his castle" has been made a part of our constitutional law which no officer of the Government of the United States can violate.

Not all arrests without a warrant are illegal, and not all searches and seizures without a warrant are prohibited. "But it is nowhere

said that there shall be no arrest without a warrant. To have said so would have endangered the safety of society. The felon who is seen to commit murder or robbery must be arrested on the spot or suffered to escape." *Wakely v. Hart*, 6 Binn. Pa. 316. However, an arrest without a warrant has never been lawful except in cases where the public security requires it.

It is universally recognized that a peace officer has the right to arrest [fol. 803] rest without a warrant one whom he finds attempting to commit a felony in his presence, or who is committing or has committed a felony in his presence or within his view. *Kurtz v. Moffit*, 115 U. S. 487. And this rule applies to any offence punishable by imprisonment in a State prison. And it is a general rule that the officer may arrest without a warrant for a misdemeanor committed in his presence. And an officer at common law may arrest without a warrant one whom he has reasonable or probable grounds to suspect of having committed a felony.

Under the Federal as well as the State statutes to justify search and seizure or arrest without warrant the officer must have direct knowledge through his hearing, sight, or other sense of the commission of the crime. *Elrod v. Moss*, 278 Fed. 123, 130.

The rule as to when a crime is committed in the presence of an officer is well stated in *Ex parte Morrill*, 35 Fed. 261, 267, where Judge Deady held that "A crime is committed in the presence of the officer when the facts and circumstances occurring within his observation, in connection with what, under the circumstances, may be considered as common knowledge, give him probable cause to believe [fol. 804] or reasonable ground to suspect, that such is the case. It is not necessary, therefore, that the officer should be an eye or an ear witness of every fact and circumstance involved in the charge, or necessary to the commission of the crime." And it is well settled that where an officer is apprised by any of his senses that a crime is being committed in his presence he may arrest without a warrant. 4 *Blackstone's Comm.* p. 299; 1 *Bishop Crom. Proc.* sec. 163-171, 182-184; *Bryne Federal Cr. Proc.* sec. 10; *O'Connor v. United States*, 281 Fed. 396, 399. *McBride v. United States*, 284 Fed. 416, 419. And it is equally true that in such cases an officer may without a warrant enter a building in which the crime is being committed and may search the same. *Wharton's Criminal Procedure* 10th ed. secs. 34, 51. And in the case at bar it is not denied that the agents of the Government had such direct knowledge of the commission of the crime as justified the arrest of the defendants without a warrant and a search of their persons without a warrant.

In the cases in which an officer may make an arrest without a warrant he may without a warrant search the person so arrested. For it is the duty of an officer, making a lawful arrest, to search the person and take from him any articles that may be used in evidence [fol. 805] against him. *Wharton's Cr. Plead.* sec. 60; *Roscoe's Cr. Evid.* 211; 2 *Am. & Eng. Encyc. of Law*, 860.

In 25 *Am. & Eng. Encyc. of Law* 149 it is laid down that "No distinction is observed between an unauthorized search of the person and one which merely involves an invasion of the citizen's con-

stitutional right to be secure in his house, papers and effects, for none is recognized either by the federal or state constitutions; the right to be secure in the lawful possession and enjoyment of property being regarded as no less sacred than the citizen's right to an immunity from an unreasonable search of his person." We may add that the right to be secure in his property is no more sacred than the [fol. 806] right to be secure in his person. And in the cases in which the officer may without a warrant deprive a man of his sacred right to his liberty he may without a warrant deprive him of his no more sacred right of property in the articles that may be used in evidence against him upon the trial for the crime for which he is arrested. His home or his office is not more sacred than his person or his liberty. Such a search and seizure is not, in our opinion, the unreasonable search and seizure which the Fourth Amendment prohibits.

X [fol. 806] In *Ganci v. United States*, decided in this court on January 2, 1923, and not yet reported, we held that a search of Ganci's home made without a search warrant was illegal. It is said that that case is decisive of this. But in that case at the time of the entry and search the officers had never seen or heard of Ganci who had committed no crime in their presence. They had arrested Lusco for delivering certain narcotics to one Smith in the officers' presence and they had some reason to believe that Lusco had obtained them at a certain tenement house to which they saw him go, as they thought, to obtain drugs. After arresting Lusco, who did not mention Ganci, the officers visited the tenement house re-[fol. 807] ferred to in which there were a number of separate apartments, one of which was occupied by Ganci. Lusco lived elsewhere. The officers visited each floor of the building making inquiries at each apartment, as they descended, and when they reached the first floor they entered Ganci's premises and the room in which he was lying on his bed. They found a box containing narcotics under a couch which they took possession of and then arrested Ganci. Lusco and Ganci were indicted under the Harrison Act and at the trial the narcotics found under the couch were put in evidence. This court held, Judge Hough dissenting, that the evidence was improperly admitted it having been illegally seized—as the search and seizure had been made without a warrant. In that case the majority of the court thought that under the circumstances Ganci having committed no crime in the presence of the officers the right to enter and search without a warrant did not exist. It cannot be that upon a suspicion that some one in a hotel or apartment house has unlawful possession of narcotics or liquors the officers can enter without a warrant and examine each guest's room or each tenant's apartment. And even if the officers should obtain a warrant authorizing them to [fol. 808] search the hotel or the apartment house generally can it be supposed that such a warrant would be valid and authorize such a search and seizure as was made in the Ganci case? That case in its facts is plainly distinguishable from the one at bar. In this case the defendants were all arrested for a crime committed in the officers'

presence, including Frank Agnello, and it was his apartment which alone was searched and from which the cocaine was taken by the officers.

In *United States v. Mitchell*, 274 Fed. 128, 131, a search without warrant had been issued against an apartment house where a number of families resided. The court referring to it as "an all devouring warrant" declared: "This of itself is sufficient to condemn it, as it was never claimed that the whole premises should be searched."

In *Silverthorne Lumber Co. v. United States* 251 U. S. 385, after an arrest of the two Silverthornes at their home the officers of the Government went to the office of the Silverthorne Lumber Company and took possession of all the books, papers and documents found there and removed them to the office of the District Attorney. This search and removal was not made under the authority of a search warrant. As no crime had been committed in the presence of the officers they had no right to make a search without a warrant. The mere fact of the arrest of a person for a crime not committed in an officer's presence certainly gives no right to search his house or his office without a warrant. That case is not at all decisive of the one now before the court as in this case the crime was one committed in the officers' presence of the agents of the Government who made the arrest and search.

[fol. 809] We may refer to a few recent cases in which the courts have upheld the right to search the premises where a crime was committed in the presence of the officers.

In *Herine v. United States*, 276 Fed. 806, certain police officers of the City of San Francisco having been informed that the peace and quiet of people were being disturbed by loud and boisterous noise in a certain apartment in that city went to the place and heard the boisterous noises and going to the rooms found the doors open and saw bottles of intoxicating liquors on the table and glasses. They entered the rooms and found a number of men and women therein "all of whom were drunk, noisy, boisterous and disturbing the peace." They found there numerous bottles and keys containing sherry and wine and the defendant told the officers he was selling the wine for 25 cents per drink. Thereupon they placed the defendant under arrest and took possession of the liquor. The seizure of the liquor under such circumstances, without a warrant, was held by the Circuit Court of Appeals for the 9th Circuit not to violate the Fourth Amendment.

The same court in *Vachina v. United States* 283 Fed. 35 held that [fol. 810] where a bottle and demijohn containing intoxicating liquor unlawfully in defendant's possession were in plain sight when officers entered a kitchen in the rear of his soft drink barroom, the seizure was legal whether or not they had a valid search warrant. The case went upon the theory that the defendant was engaged, in the presence of the officers, in the actual commission of an offence denounced by the law in that he had possession of intoxicating liquor in his place of business, and that the officers without a warrant might in such a case seize the instrument of the crime.

The same court in *Kathriner v. United States*, 276 Fed. 808 also

held a seizure of intoxicating liquor without a warrant not unlawful. In that case the officers entered a soft drink establishment, formerly a saloon, and found the bartender behind the bar. An officer jumped over the bar and seized liquor found behind the bar. The want of a warrant did not make the seizure unlawful.

In *United States v. Holsinger*, 284 Fed. 585, District Judge Peck not only held that prohibition agents were entitled without warrant to seize from a truck intoxicating liquor which was being unlawfully transported, but also held in a thoughtful and well reasoned opinion [fol. 811] that prohibition agents may search a licensed brewery without a warrant and seize liquor unlawfully manufactured therein, the liquor having an alcoholic content in excess of one-half of one per cent. And a motion to exclude the liquor from evidence is overruled. The justification of the seizure of the liquor from the truck was based upon the theory that an offence against the United States was being committed in the actual presence of the officers in its unlawful transportation. In that case, however, the right to search the brewery without a warrant was based upon certain statutory provisions which conferred upon an inspector of the Internal Revenue Department the right to enter in the day time any building where any objects subject to tax are being made so far as is necessary for the purpose of examining the same, and which invested the agents charged with the enforcement of the Prohibition Act with the powers possessed by the Commissioner of Internal Revenue under Section 3177 of the Revised Statutes.

In *McBride v. United States*, 284 Fed. 416 the officers went on the premises without a search warrant and seized a still. They justified their entry and seizure on the ground that they entered the still [fol. 812] after smelling fumes of whiskey then being made in violation of law and that they then seized the property as forfeited to the United States. The Circuit Court of Appeals for the Fifth Circuit held that when an officer is apprised by any of his senses that a crime is being committed it is being committed in his presence, and that the search and seizure in this case were therefore legal. See *Lambert v. United States* 282 Fed. 413; *Bell v. United States* 285 Fed., 145.

In *People v. Cona*, 180 Mich. 641, the defendant was arrested for a murder committed on the street in the presence of an officer. The defendant at the time of his crime fled and was later arrested in his home. At the trial a policeman gave evidence to the effect that he found two revolvers in a sewing machine drawer in the house in which the defendant was arrested. It was claimed that the seizure of the revolvers was in violation of the Federal Constitution, citing *Weeks v. United States*, 232 U. S. 383. The court did not point out in its opinion that the restrictions in the Federal Constitution have no application to State officers although it said that a reading of the opinion in the *Weeks* Case made it apparent that the principles which that case laid down were without application to the case then before [fol. 813] the court. The objection raised was disposed of by saying that a reading of the opinion in *Weeks v. United States*, *supra*, "makes it apparent that the principles there announced and relied upon by the defendant are not applicable in the case at bar." The

court sustained the legality of the seizure of the revolvers, citing *Smith v. Jerome* 47 Misc. Rep. 22; 93 N. Y. Supp. 202 quoting therefrom the following passage: "The police have the power and it is also their duty to search the person of one lawfully arrested, and also the room or place in which he is arrested, and also any other place to which they can get lawful access, for the articles that may be used in evidence to prove the charge on which he is arrested." Judge Gaynor in his opinion in the New York case comments on the fact that the authorities on the subject seem to be few, and adds that it is "only because the thing has seldom, if ever, been questioned."

Whether a search or seizure in a criminal case is or is not unreasonable must necessarily be determined according to the facts and circumstances of the particular case. In the instant case we think that what the defendants did in the presence of the agents of the Government was sufficient to justify not only the arrest and search of their persons but also the search of the home of one of them under [fol. 814] the circumstances disclosed.

In the case at bar, as we have seen, the persons making the arrest were appraised by what they saw that a crime was being committed in their presence, they made the arrests without a warrant and they made immediate search of the persons they had placed under arrest and thereafter immediate search was made of the room of one of the arrested persons, Frank Agnello, to whose premises Centerino, one of the defendants, had gone a short time before after telling one of the Government's agents that he did not have the cocaine but would have to go and get it. Centerino in about five minutes came out of Agnello's premises, at No. 167 Columbia Street, accompanied by the two Agnellos and Pace. They went directly to Alba's house, Alba having remained there. The agents looking through the window in Alba's house saw all the defendants sitting around the table and upon it the packages of cocaine. The arrests followed and then the search of the persons arrested and the search of Frank Agnello's premises where they found and took possession of the can of cocaine which was offered in evidence. The agents had such direct and personal knowledge as justified the search of the premises of Agnello—as fully as it did the search of his person.

Before concluding this opinion we may call attention to the fact that United States Marshals and their deputies have in each State the [fol. 815] same powers in executing the laws of the United States as the sheriffs and their deputies in each State have by law in executing the laws thereof. U. S. Rev. St. Sec. 788. The Statute invests the marshal and his deputies in his district with all the powers, common law and statutory, which a sheriff and his deputies have in the State in which his district lies. *Carico v. Wilmore*, 51 Fed. 196, 199.

The Code of Criminal Procedure of the State of New York (1907) Section 177, provides that a peace officer may, without a warrant, arrest a person:

1. For a crime committed or attempted in his presence.
2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it.

These provisions are in accord with the rule at common law. See *People ex rel. Kingsley*, 22 Hun. (N. Y.) 300, 301.

The same Code in Section 183 also provides that a private person may arrest another in the following cases:

1. For a crime committed or attempted in his presence;
2. When the person arrested has committed a felony, although not in his presence.

And this appears to have been the law of New York irrespective of Statute. See *Holley v. Mix*, 3 Wend. 353 (1829).

The defendants herein were not, however, arrested by the United States Marshal or any of his deputies. The persons by whom they were placed under arrest and who searched the premises of the defendant, Frank Agnello and took possession of the can of cocaine, seem to have been agents of the Commissioner of Internal Revenue, and as such we are not aware that they possess any special authority [fol. 816] to make arrests. But a private person under the common law has a right, and it is his duty, to make an arrest without a warrant in certain cases. A private person has the same right as an officer to arrest without a warrant if a felony is committed in his presence. *Rex v. Howarth*, 1 Moody c. c. 207; *People v. Governale* 193 N. Y. 581; *Brooks v. Commonwealth*, 61 Pa. 352; *State v. Mowry* 37 Kans. 369; *Kennedy v. State*, 107 Ind. 144; *Kercheval v. State*, 46 Ind. 120. And in the cases in which a private person can arrest without a warrant, he is entitled to make a search of his person and of his premises also without a warrant. As a private person has the same power as a peace officer to make an arrest, if the crime has been actually committed in his presence, and it is not disputed that in the case at bar the crime was committed in the presence of those who made the arrest, the cases to which we have referred in the course of this opinion sustaining the right of a peace officer to arrest and search without a warrant where the crime is committed in the presence of the officer are, of course, applicable to the facts of this case although the persons making the arrest and search may have in such matters no greater rights than those possessed by any other private citizen in whose presence a crime is committed.

Judgment Affirmed.

[fol. 817] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

CONCURRING OPINION

HOUGH, C. J. (concurring):

In result I agree with Judge Rogers, but cannot follow the reasoning by which result is reached.

The constitutional rule is simple in form, and single in statement, there are no sub-heads and no exceptions. That the right of the people to be secure in their houses and effects against unreasonable searches and seizures shall not be violated, is the rule.

As the expression of one excludes the other, there is no right in the people to be secure from reasonable searches and seizures. Consequently the only question in every case is whether under the evidence there was unreasonable action.

[fol. 818] Unreasonableness is matter of fact, although it is also one of those fact questions which, because it has been decided by generations of judges instead of being left to juries, is commonly denominated a question of law.

To say that a man may be searched after arrest, though not before; or that a place or house may be searched when a crime is there seen to be committed, and not otherwise, is to introduce false standards; the question always remains, was the search or seizure unreasonable? The arrest is no more than evidence, that suspicion had come near enough to certainty to make both arrest and search reasonable. If it appeared, however, that the arrest was only for the purpose of search, the evidence would be overwhelming, that the whole procedure was unreasonable, unconstitutional and actionable.

To say that a crime was seen to be committed, is but saying that the observer became a competent witness in proving criminal act and intent. Undoubtedly the phrase has been used so long that it has acquired a technical meaning, to wit acquisition by the peace officer, through one of his senses, of knowledge of facts which in a reasonable man induce belief that crime has been committed.

An officer who hears an explosion as a fire-arms in a residence and at once sees a man leave the building; one who smells liquor in a house and sees the proprietor, or who by any sense becomes aware of phenomena reasonably suggestive of the proximity of crime [fol. 819] and a criminal, may arrest and search: that it finally appears that no crime was committed, may not and usually does not render either arrest or search unreasonable.

In the present case the matters seen and heard by the officers, were most persuasive of crime committed; arrest were fully warranted and so was search, not only of the place or house in which defendants met, but of any other place reasonably indicated by surrounding circumstances as containing incriminating matter. No. 167 Columbia Street was emphatically such a place; incriminating evidence was there discovered; and since it was the result of a reasonable search and seizure, it was properly admitted in evidence.

The foregoing train of thought led to my dissent with the Ganci case. The more that proceeding is examined, the more it resembles this in every essential particular. In each a probable, almost certain criminal was seen to leave a certain house, in each the criminal transfer or sale was watched, in each the house left by the criminal was searched and in each incriminating evidence of the crime observed was found. The only difference is that the Ganci search revealed an additional criminal, who naturally complained about it.

But the difference is immaterial. Consequently I am unable to differentiate between that case and this, when the single question is as to reasonableness.

[fol. 820] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—Filed April 3, 1923

Error to the District Court of the United States for the Eastern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. W. R.

M. T. M.

[fol. 821] [File endorsement omitted.]

[fol. 822] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 821 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Thomas Agnello, plaintiff in error, against United States, defendant in error, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 6th day of April in the year of our Lord One Thousand Nine Hundred and Twenty-three and of the Independence of the said United States the One Hundred and Forty-seventh

Wm. Parkin, Clerk. (Seal United States Court of Appeals,
Second Circuit.)

[fol. 823] UNITED STATES OF AMERICA, ss:

UNITED STATES CIRCUIT COURT OF APPEALS

WRIT OF CERTIORARI AND RETURN—Filed July 5, 1923

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Thomas Agnello, Frank Agnello, Stephen Alba, Antonio Centerino and James Pace, are plaintiffs in error, and The United States of America is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Eastern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme [fol. 824] Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-third day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 825] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

It is hereby stipulated that the transcript of record already on file in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., on the application for certiorari herein, shall be taken as the return to the writ of certiorari granted herein by the United States Supreme Court on June 23, 1923, to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, July 2nd, 1923.

Battle, Vandiver, Levy & Van Line, Counsel for Plaintiffs in Error. Ralph C. Greene, Sr., U. S. Atty.

[fol. 826] To the Honorable the Supreme Court of the United States,
Greeting:

The record and all proceedings whereof mention is within made, having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York July 5, 1923.

Wm. Parkin, Clerk of the United States Circuit Court of
Appeals for the Second Circuit. (Seal of United States
Circuit Court of Appeals, Second Circuit.)

[fol. 827] [File endorsement omitted.]

[fol. 828] [File endorsement omitted.]

(4003)

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In the Supreme Court of the United States

OCTOBER TERM, 1924

THOMAS AGNELLO ET AL., PETITIONERS

v.

THE UNITED STATES OF AMERICA

} No. 45

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT*

BRIEF ON BEHALF OF THE UNITED STATES

STATEMENT

The five petitioners (hereafter called the defendants) were tried in the Eastern District of New York on an indictment which charged them with (1) conspiring to sell, and (2) actually selling, heroin and cocaine without having first registered with the Collector of Internal Revenue, contrary to the Harrison Act as amended (act of Dec. 17, 1914, c. 1, 38 Stat. 785, as amended by act of Feb. 24, 1919, c. 18, 40 Stat. 1057, 1130) and contrary to Section 37 of the Penal Code.

At the trial the second count of the indictment was dismissed on the ground that it failed to allege that the offense was committed within the jurisdiction of the court. (R. p. 501, 512.) The case went

to the jury on the first count alone, and all five defendants were found guilty and duly sentenced. The convictions were affirmed by the Circuit Court of Appeals. The opinion below is reported in 290 Fed. 671, and appears in the record at page 521. The defendants then petitioned this Court for a writ of certiorari, and in this petition the United States concurred. The writ was granted on April 30, 1923 (262 U. S. 738).

The one important question involved is as to the admission in evidence of a can of cocaine hydrochloride found by Government agents, immediately after the arrest of the defendants, in the bedroom of defendant Frank Agnello. For a correct understanding of this question, the attendant circumstances must be briefly reviewed.

Two Government employees, Napolitano and Dispenza, twice visited No. 138 Union Street, Brooklyn, the home of defendant Alba, on Saturday, January 14, 1922, and offered to buy narcotics. Alba supplied them with samples; and an appointment was made for another visit on Monday, January 16th. (R. pp. 10-18.) On the latter day, Napolitano and Dispenza returned to No. 138 Union Street and went inside. (R. p. 20.) Six Federal narcotic agents (Oyler, Connolly, McCormick, Manning, Mellon, and Pacetta) and a city policeman (Moog) remained on watch in the street, where they were able to see through the windows into the house. (R. pp. 71, 72.) On entering the house, Napolitano and Dispenza found defendant Alba, who then went

out and returned, bringing defendant Centerino with him. (R. p. 20.) After some conversation, partly in the house and partly on the street in front of the door, Centerino went away to fetch the narcotics, and was followed by some of the officers to No. 172 Columbia Street (Centerino's home), and from there to No. 167 Columbia Street (the home of Pace and Frank Agnello). (R. p. 73.) All these places were within a few blocks of each other. (R. pp. 428, 459-462.) After about ten minutes Centerino came out of 167 Columbia Street, accompanied by the two Agnellos and Pace. (R. p. 74.) Centerino's own evidence (R. pp. 397-399) was that he had taken some cocaine from a closet in his own house and had carried it over to 167 Columbia Street, where he gave it to Frank Agnello to carry back for him to Alba's house.

Centerino, the two Agnellos, and Pace, then returned to Alba's house, No. 138 Union Street, and went inside. (R. p. 74.) A few minutes later, the officers, looking through the window, saw the defendants in the very act of selling narcotics to Napolitano and Dispenza. (R. pp. 76-77.) The officers thereupon entered the house and placed all the defendants under arrest. They found some packages of narcotics on the table in the front room, and some other packages on the person of Frank Agnello. (R. p. 79.) In Alba's pockets they found the marked money which had just been paid to him by Napolitano. (R. p. 90.) Immediately after the

arrest, while some of the officers were taking the defendants to the police station, officer Manning and the others, without a search warrant, returned to 172 Columbia Street, which they searched without result. (R. pp. 485, 486.) They then went to 167 Columbia Street, which was an Italian grocery store; and in a bedroom on the ground floor, on top of a wardrobe, they found a can of cocaine hydrochloride. (R. pp. 486-488.) It is undisputed that the bedroom was occupied by Frank Agnello, and that the wardrobe was one in which he kept his clothes. (R. p. 478.)

This can, and the account of the search, were offered in evidence as part of the Government's main case, but were excluded. (R. p. 85.) They were again offered in rebuttal, to contradict the statements of Frank Agnello that he did not know he was carrying narcotics and that he had never seen the can until the trial. This time they were admitted in evidence over objection. (R. pp. 472, 477, 485-488.) Their admission is assigned by the defendants as error.

It is apparent that the facts of this case serve to differentiate it in several important respects from the cases of unlawful search and seizure previously considered by this Court.

In the first place, it must be noted that the article seized was not a document or a similar thing which had merely evidentiary value. It was a thing inherently vicious, which was used as the means of committing a crime, analogous to burglar's tools or

lottery tickets. *Commonwealth v. Dana*, 2 Metc. (43 Mass.) 329. In the second place, the seizure was practically contemporaneous with the arrest. The arrest was lawfully made without a warrant, for a felony committed in the actual sight and presence of the officers; and *immediately thereafter*, a search was made in the place whence the officers themselves had just seen the culprits emerge. This search disclosed the can of cocaine hydrochloride, an article used in the commission of crime, in the bedroom of one of the persons just arrested. Finally, it must be noted that no demand was made by the defendants, either before or during the trial, for the return of the articles seized, although they must have known of the seizure, which was carried out perfectly openly. *Adams v. New York*, 192 U. S. 585; *Weeks v. United States*, 232 U. S. 383.

ARGUMENT

I

The article seized was not one which could be used as evidence merely. It was itself an instrument of crime, analogous to lottery tickets, burglars' tools, counterfeit coin, or to weapons found in the possession of one suspected of homicide. The Harrison Act provides:

SEC. 8. That it shall be unlawful for any person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act, to have in his possession or under his control any of the

aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of section one of this Act * * *. [Act of Dec. 17, 1914, c. 1, 38 Stat. 785, 789.]

Section 1006 of the Revenue Act of 1918, amending section 1 of the Harrison Act, provides:

That all unstamped packages of the aforesaid drugs found in the possession of any person, except as herein provided, shall be subject to seizure and forfeiture, and all the provisions of existing internal-revenue laws relating to searches, seizures, and forfeitures of unstamped articles are hereby extended to and made to apply to the articles taxed under this Act and the persons upon whom these taxes are imposed. [Act of Feb. 24, 1919, c. 18, 40 Stat. 1057, 1131.]

In view of these statutory provisions, it is submitted that counsel for the defendants are in error when they state (page 21 of their brief) that the possession of opium is not an offense under the Harrison Act, and that narcotics are not forfeitable to the United States. The possession of opium, if not an offense, is presumptive evidence of an offense; and the opium, if unstamped, is forfeitable.

This case then furnishes no example of the practice, so often condemned by this Court, of searching among a defendant's papers in the hope of discovering evidence which may prove useful as evi-

dence against him. It is rather an example of search made immediately after an arrest for openly committed felony, to discover the instruments with which the felony was committed. In this connection it must be noted that one of the overt acts specified in the indictment is:

That during the continuance of the said conspiracy and for the purpose of effecting the object of same the said defendants and each of them *had in their possession* a large quantity of heroin and cocaine as above stated. [R. p. 4.] [Italics ours.]

The decisions of this Court have often recognized the distinction, above suggested, between search for the instruments of crime as opposed to search for the evidence of crime. It is submitted that this case falls within the authority of *Adams v. New York*, 192 U. S. 585, 598. And the other cases in this Court, denouncing unlawful searches, make no attempt to cover the point here involved.

The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ *toto coelo*. In the one case, the government is entitled to the possession of the property; in the other it is not. The seizure of stolen goods is authorized by the common

law; and the seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of the government. [*Boyd v. United States*, 116 U. S. 616, 623.]

[*Cf. Carroll and Kiro v. United States*, in this Court, March 2, 1925, unreported as yet.]

What then is the present case? Before answering that inquiry specifically, it may be well by a process of exclusion to state what it is not. It is not an assertion of the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime. This right has been uniformly maintained in many cases. 1 Bishop on Criminal Procedure, s. 211; Wharton, Crim. Plead. and Practice, 8th ed., s. 60; *Dillon v. O'Brien and Davis*, 16 Cox C. C. 245. Nor is it the case of testimony offered at a trial where the court is asked to stop and consider the illegal means by which proofs, otherwise competent, were obtained—of which we shall have occasion to treat later in this opinion. Nor is it the case of burglar's tools or other proofs of guilt found upon his arrest within the control of the accused. [*Weeks v. United States*, 232 U. S. 383, 392.]

II

It is undoubted law that an officer who arrests a person for felony committed in his presence has the right to search the accused in order to discover the instruments and fruits of his crime. This was done in the present case (*vide supra*), with the result that cocaine was found upon Frank Agnello, and marked money upon Alba. (R. pp. 79, 90.) But the cases go further than this. They allow a search, not merely of the person of the accused, but also of the place where he is discovered, and of any other places in the immediate vicinity which are clearly indicated as having formed part of the scene of the crime.

Dillon v. O'Brien and Davis, 16 Cox C. C. 245.

Getchell v. Page, 103 Me. 387.

Kneeland v. Connally, 70 Ga. 424.

1 Bishop, Cr. Proc., s. 211 (2d Ed.).

1 Wharton, Cr. Proc., s. 97 (10th Ed.).

The foregoing were cited with approval by this Court in *Carroll and Kiro v. United States*, *supra*. In addition may be cited:

People v. Chiagles, 237 N. Y. 193, affirming 204 App. Div. 706.

People v. Cona, 180 Mich. 641.

Smith v. Jerome, 47 Misc. (N. Y.) 22.

State v. Mausert, 88 N. J. L. 286.

Closson v. Morrison, 47 N. H. 482.

Spalding v. Preston, 21 Vt. 9.

The Constitution protects the people from *unreasonable* searches. It is admitted that searches

are not necessarily reasonable when they are made under warrants, for the warrant may have been issued for an improper purpose. *Robinson v. Richardson*, 13 Gray (79 Mass.), 454. But it does not follow that searches are necessarily unreasonable in all cases where they are made without warrants. This Court, in a recent decision, has expressly held that a search may be reasonable when made upon probable cause, even though no warrant is used. *Carroll and Kiro v. United States*, *supra*. The sanctity which the law attaches to the home is certainly no greater than the sanctity which it attaches to the person. Indeed, the immunity of the person from arbitrary arrest is more highly prized than the immunity of the home from arbitrary search. But it is conceded to be sound law that because an arrest is made without a warrant it is not, for that reason alone, an unlawful arrest. It is justified, *inter alia*, when the person who is arrested has committed a felony in the presence of the person who makes the arrest. And it is submitted that a search without warrant is justified under the same circumstances and by reason of the same pressing need.

The opinion of the Circuit Court of Appeals raises this question in respect to the facts of this case:

It seems to be admitted that the agents had the right to arrest these defendants without a warrant and had a right without a warrant to search their persons—a crime

having been committed in their presence. But it is denied that the agents had any right to go from the place of the arrest to No. 167 Columbia Street, from which all the defendants but Alba were seen by the agents to emerge a short time before and from which they were supposed to have obtained the drugs which Centerino had informed the Government's agent he was going out to get and there search without a warrant the room of the defendant Frank Agnello. The question thus raised is one of great importance. May an agent of the Government, in a case where he can arrest without a warrant and search the person without a warrant, search also without a warrant the home of the person so arrested? Is such a search and seizure to be regarded as such an "unreasonable" search and seizure as violated the constitutional rights of Frank Agnello? [R. pp. 522-523, 290 Fed. 671, 673.]

In this case the officers were undoubtedly apprised by their senses, in the most direct way, that a crime was committed in their presence by the selling of narcotics at 138 Union Street. They were also apprised by their senses that the instrument of the crime (a supply of narcotics) was concealed in the places where the search was afterwards made. Two of the officers saw the sale through the window. (R. pp. 76, 218.) Two had seen all the defendants (except Alba) emerge from No. 167 Columbia Street a few minutes before the arrest. (R. pp. 74, 126.) The Government's in-

formers, Napolitano and Dispenza, had been told by Centerino that he would go out to his friend's house and bring back the stuff. (R. pp. 21, 230.) Officer Oyler testified that immediately after the arrests were made he questioned the defendants, with the following results:

Questioning defendant Pace: I asked him where his place of business was, and he said, "No. 167 Columbia Street." I said, "That is the same house they brought the narcotics out of." * * * I said, "What do you import? Narcotics?" He would not answer. [R. pp. 133, 134.]

Questioning defendant Thomas Agnello: He came over with Pace. He said that he and Pace were partners. I asked Pace if that was right and he said "Yes." I then asked them where they lived, again, and they said at 167. *I informed him that we were going to search that house, they said "All right."* [R. p. 135.] [Italics ours.]

Thus it will be seen, from an examination of the record, that the officers knew, before making the arrests, that a sale of drugs would be consummated at 138 Union Street. They knew, moreover, that the supply was coming from some other house in the vicinity. But until the night of the arrests there was nothing to show them from which house; so it would have been impossible to apply for a search warrant in advance. They had watched outside No. 138 Union Street on the Saturday night, two days before the arrests. On that occasion the defendants Centerino and Alba had sup-

plied Napolitano and Dispenza with samples of narcotics and had arranged for another meeting on Monday evening. (R. pp. 13, 18.) On the night of the arrests the officers saw Centerino leave the house, No. 138 Union Street. They followed him first to 172 Columbia Street and then to 167. They saw him leave the latter place with three other defendants. On his return to 138 Union Street, they saw the sale take place almost at once. They found narcotics on the person of Frank Agnello. Under these circumstances the officers first arrested the offenders and then at once proceeded to search for the instruments of the crime at the two places from which the defendants had just been seen to come. It is submitted that these circumstances are precisely those which were contemplated in *Boyd v. United States*, and in *Weeks v. United States* (supra, pp. 7-8) as exceptions to the general rules therein laid down. The offenders are captured red-handed. Admittedly, no warrant is required for the arrest. Will a warrant then be required for an immediate search of the place where it clearly appears to the officers' own knowledge that the instruments of the crime are concealed?

It is submitted that the Circuit Court of Appeals, in this case, following the decisions of other Circuit Courts of Appeal, laid down the correct test—namely, that where an officer may arrest without warrant, he may also at that same time search without warrant in any place in the immediate vicinity

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where it is clearly indicated that the *instruments of the crime* (not evidence merely) are hidden. ✓

Milam v. United States, 296 Fed. 629.

Lambert v. United States, 282 Fed. 413.

Vachina v. United States, 283 Fed. 35.

McBride v. United States, 284 Fed. 416.

Herine v. United States, 276 Fed. 806.

“Burglars’ tools, used by the owner to commit a crime, may be kept from his possession when found on his person *or on his premises or elsewhere* * * *.” [Italics ours.] [*United States v. Hart*, 214 Fed. 655, 662.]

A crime is committed in the presence of the officer when the facts and circumstances occurring within his observation, in connection with what, under the circumstances, may be considered as common knowledge, give him probable cause to believe, or reasonable ground to suspect, that such is the case. It is not necessary, therefore, that the officer should be an eye or an ear witness of every fact and circumstance involved in the charge, or necessary to the commission of the crime. [*Ex parte Morrill*, 35 Fed. 261, 267.]

According to the rule laid down in the case last cited, it might well be argued that a crime was committed in the presence of the officers, not only at 138 Union Street, the place of the arrest, but also at 167 Columbia Street, the place of the search. In addition, it seems clear that the officers had *probable cause* for the search as well as for the arrest under the recent decision of this Court in the *Carroll*

case, *supra*. Cf. *Stacey v. Emery*, 97 U. S. 642, 645. And upon this theory, the search would of itself be clearly valid, even when viewed apart from the arrest.

III

Even if it should be held that the search and seizure in this case were unlawful, there are further reasons why this conviction should not be disturbed. In the first place, no demand was made on behalf of Agnello or any other one of the defendants for the return of the narcotics, although they must have known of the seizure. There is not a word in the record to show that the defendants were taken by surprise by the introduction in evidence of the seized articles. Even after the Government had sought, unsuccessfully, to introduce the seized article as part of its main case, the defendants made no motion for its return, but contented themselves with objecting to its admission in evidence. Under these circumstances, there is no room to apply the rule of *Gouled v. United States*, 255 U. S. 298, that when the defendant knows nothing of the unlawful search until the evidence thereby obtained is introduced at the trial, his objection will not be regarded as coming too late. Neither is there room to apply the rule of *Amos v. United States*, 255 U. S. 313, for in that case the objection was taken, and the petition for return was presented, immediately after the jury was sworn, *and before any evidence was offered*.

This Court has never yet receded from the doctrine enunciated in *Adams v. New York*, 192 U. S. 585, and *Weeks v. United States*, 232 U. S. 383, that a collateral issue as to the source of evidence will not be permitted to interrupt a criminal trial unless the ground has been prepared by a timely motion for the return of the articles alleged to have been wrongly taken. The Government rests its argument on this point squarely upon those cases. In *Weeks v. United States*, this Court said:

It is therefore evident that the *Adams Case* affords no authority for the action of the court in this case, *when applied to in due season for the return of papers seized in violation of the Constitutional Amendment.* [Italics ours.] [232 U. S. 383, 396.]

It is a reasonable deduction that the *Adams Case* *does* afford authority for the action of the court, when, as in the present case, it is *not* applied to in due season for the return of articles so seized. And again, the Court in *Weeks v. United States* said:

We therefore reach the conclusion that the letters in question were taken from the house of the accused by an official of the United States acting under color of his office in direct violation of the constitutional rights of the defendant; *that having made a seasonable application for their return, which was heard and passed upon by the court, there was involved in the order refusing the application a denial of the constitutional rights of the accused, and that the court should have re-*

stored these letters to the accused. [Italics ours.] [232 U. S. 383, 398.]

Cf. *People v. Marxhausen*, 204 Mich. 559, 573.

Weeks v. United States lays down the requirement of a preliminary motion for the return of articles unlawfully seized. *Gouled v. United States* dispenses with the necessity for this motion where it is obvious that the defendant is taken by surprise and had no opportunity to make the motion before trial. In the absence of such a motion and in the absence of any proof of surprise the rule of *Adams v. New York*, approved and followed in *Weeks v. United States*, should be adhered to; and the court will not frame a collateral issue to discover the source of evidence otherwise admissible.

IV

Again, even if it should be held that the search and seizure in this case were unlawful, attention is directed to the manner in which the evidence was employed. Its introduction as part of the Government's main case was sought *and refused*. The Government then proceeded to establish the guilt of the defendants by other evidence, entirely independent of the search or of any information directly or indirectly obtained by the search. An examination of the record will show that this independent evidence was of itself more than sufficient to warrant a conviction. It was only when the defendant Frank Agnello, on the witness stand, resorted to

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 obvious falsehoods, testifying that he did not know that he was carrying narcotics on the night of the arrest, that he had never seen narcotics before, and that he had never seen the can of cocaine hydrochloride until the trial—it was only then, in rebuttal of these statements, that the Government was permitted to give evidence that the can had been found in his room. R. pp. 472, 476-477, 487-488. The evidence of the search was used only as a medium of discrediting the witness, and was not used in any way either as a direct part of the Government's main case, or as an indirect clue toward obtaining other evidence. In this respect the case at bar differs from all the previous cases in which this Court has discountenanced the practice of unlawful search and seizure to obtain evidence on which to build up a case against the defendant. Here the Government's case was complete without resort to the evidence of the search; and the error, if it existed, was not prejudicial.

Laughter v. United States, 259 Fed. 94, 100. Certiorari denied, 249 U. S. 613.

Judicial Code, s. 269, as amended by Act of February 26, 1919, c. 48, 40 Stat. 1181.

Hall v. United States, 277 Fed. 19.

Rich v. United States, 271 Fed. 566.

V

In any event, the evidence of the search and seizure tended to prejudice only one of the defendants—namely, Frank Agnello—in whose room the search was made and whose testimony the Govern-

ment sought to impeach by introduction of the seized article. Even if it be conceded that its admission was error as to him, the other defendants are not entitled to object. Officer Oyler stated that at least two of the other defendants were informed of the proposed search and that they consented. (R. p. 135, quoted *supra*, p. 12.) None of them asked for an instruction to limit the effect of the evidence of the seizure. The case against them was complete without that evidence, and the jury was fully warranted in finding them guilty.

Hyde v. United States, 225 U. S. 347, 374.

Isaacs v. United States, 159 U. S. 487.

VI

The defendants attack the indictment on the ground that it does not state facts sufficient to constitute a crime. The alleged defect is that the indictment charges a conspiracy to sell heroin and cocaine but fails to charge a conspiracy to sell *within the United States*.

This contention is without merit. In the first place, the indictment states that the defendants conspired in Brooklyn, and sets forth as one of the overt acts (No. 4) a transportation and sale in Brooklyn. An indictment for conspiracy need do no more than this.

Hyde v. United States, 225 U. S. 347.

Wallace v. United States, 243 Fed. 300; certiorari denied, 245 U. S. 650.

Vane v. United States, 254 Fed. 28, 30.

In the second place, it states that the conspiracy was to sell "without having first registered with the Collector of Internal Revenue of *this* district." (R. p. 4.) It is a reasonable inference from that statement that the sale was to be made within the United States and within the particular Internal Revenue district where the Grand Jury was sitting. If the sale was to be made outside the United States, or in another Internal Revenue district within the United States, registration in "*this*" district would be wholly immaterial; and there would be no reason to charge a failure to register in "*this*" district. Reasonable inferences from facts clearly charged may be indulged in ascertaining the meaning of an indictment.

X / *Rosen v. United States*, 161 U. S. 29, 34. \ X
Dunbar v. United States, 156 U. S. 185.

In the third place, even if it be granted that a defect exists, it is merely formal, and the defendants are not entitled to relief. They attacked the indictment by a general motion in arrest of judgment, on the ground that it did not state facts sufficient to constitute a crime. No reasons were assigned for this motion, and the attention of the court was not directed to this defect or to any other. The defect, if it existed, was such that it could be attacked only by demurrer, by motion to quash, or by a request for a bill of particulars.

R. S. 1025.

Holmgren v. United States, 217 U. S. 509.

Armour Packing Co. v. United States, 209
U. S. 56, 83.

VII

It is therefore respectfully submitted that the judgment of the Circuit Court of Appeals should be affirmed.

JAMES M. BECK,
Solicitor General.

WILLIAM J. DONOVAN,
Assistant to the Attorney General.

APRIL, 1925.

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Motion for Writ of Certiorari.

Supreme Court of the United States

October Term

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA, ANTONIO CENTERINO and JAMES PACE, *Petitioners,*

against

THE UNITED STATES OF AMERICA, *Respondent.*

COME now, Thomas Agnello, Frank Agnello, Stephen Alba, Antonio Centerino and James Pace, by George Gordon Battle, their counsel, and move this Honorable Court that it shall by certiorari or other proper process directed to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, require said Court to certify to this Court for its review and determination a certain cause in said Court of Appeals lately pending, wherein the respondent United States of America was defendant-in-error and your petitioners were plaintiffs-in-error, and to that end they now tender herewith their petition and brief with a certified copy of the entire record in said cause in said Circuit Court of Appeals.

GEORGE GORDON BATTLE,
Counsel.

Petition for Writ of Certiorari.

SUPREME COURT OF THE UNITED STATES.

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA, AN-
TONIO CENTERINO and JAMES PACE, *Petitioners,*

against

THE UNITED STATES OF AMERICA, *Respondent.*

To the Honorable Supreme Court of the United States:

The petition of Thomas Agnello, Frank Agnello, Stephen Alba, Antonio Centerino and James Pace, petitioners, respectfully represents:

1. That the said petitioners were indicted in the United States District Court for the Eastern District of New York for the crime of conspiracy to commit the offense of selling heroin and cocaine in violation of the Harrison Act, and after a trial before Honorable EDWIN L. GARVIN and a jury, were convicted and each of the said petitioners was sentenced to be imprisoned for a term of two years at Atlanta Penitentiary and to pay a fine of Five Thousand Dollars.

2. That thereafter by a writ of error to the said United States District Court the said cause was brought on to be heard in the United States Circuit Court of Appeals for the Second Circuit, and on the 28th day of March, 1923, the Circuit Court of Appeals for the Second Circuit handed down its opinion affirming the judgment of conviction.

3. That the judgment of the Circuit Court of Appeals is final and is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination.

4. The ground upon which this writ is requested is that the determination of the Circuit Court of Appeals establishes a new interpretation of Amendments 4 and 5 of the Constitution, and is in direct conflict with the decisions of this Honorable Court. The opinion in this case after stating the facts reads as follows:

"The question thus raised is one of great importance. May an agent of the Government in a case where he can arrest without a warrant and search the person without a warrant, search also without a warrant the home of the person so arrested? Is such a search and seizure to be regarded as such an 'unreasonable' search and seizure as violated the constitutional rights of Frank Agnello? If it constituted such a violation we must consider whether the property so seized was improperly received in evidence."

And further the opinion states:

"And in the cases in which the officer may without a warrant deprive a man of his sacred right to his liberty he may without a warrant deprive him of his no more sacred right of property in the articles that may be used in evidence against him upon the trial for the crime for which he is arrested. His home or his office is not more sacred than his person or his liberty. Such a search and seizure is not, in our opinion, the unreasonable search and seizure which the Fourth Amendment prohibits."

5. The can of cocaine which was received in evidence was found *after* the arrest, and in the home of one of

the defendants, several blocks from the house in which the selling actually took place and the persons were arrested. It was offered in evidence on the direct case of the prosecution, but was rejected by the Court as having been obtained through an unlawful search. It was then offered and received in rebuttal, to contradict the testimony of Frank Agnello, given on cross examination.

The can of cocaine was seized, not as the instrument or subject-matter of the offense. It was not seized as property which was subject to confiscation by the United States, since possession is not made an offense under the Harrison Act. It was seized merely for the purpose of being used as evidence, and when received in evidence amounted to compulsory self-incrimination. It is respectfully submitted that no circumstances can render a search for such purpose reasonable or lawful.

As appears by the concurring opinion of Judge HOUGH, this question arose in the *Ganci* case (not reported, copy of opinion is attached to the brief). In that case Judge HOUGH dissented. In this case Judge HOUGH concurs but dissents from the reasoning of the majority of the Court.

A further ground upon which your petitioners ask that the writ of certiorari may be granted is that the indictment is fundamentally defective in that it does not charge a conspiracy to sell heroin or cocaine within the United States. It alleges a conspiracy within the United States to sell heroin and cocaine, but does not charge that the parties planned, combined, or conspired to sell within the United States. It is only sales within the United States that are subject to the regulation of the Harrison Act, and it is only an actual sale within the United States that could be the subject of the substantive offense; the conspiracy therefore to be unlawful

must be a conspiracy to sell within the United States, and the indictment must so allege.

6. A further ground upon which your petitioners ask that the writ of certiorari may be granted is that there was substantial error violating the constitutional right of the defendants to be confronted by the witnesses against them, in that the Court refused to compel the witness Dispenza to disclose his address; the testimony of this witness was the only testimony that directly implicated the defendants Thomas Agnello, Frank Agnello and James Pace in the commission of the crime.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued under the seal of the Court, directed to the United States Circuit Court of Appeals for the Second Circuit, sitting at the City of New York, commanding the said Court to certify and send to this Court on a day to be designated a full and complete transcript of the record and of the proceedings of the Circuit Court of Appeals had in said cause, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Statutes of the United States; and that the said judgment of the Circuit Court of Appeals be reversed by this Honorable Court, and for such further relief as may seem proper.

And your petitioners will ever pray.

THOMAS AGNELLO,
Petitioner.

GEORGE GORDON BATTLE,
Counsel.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

THOMAS AGNELLO, being duly sworn, deposes and says that he is one of the petitioners above named; that he has read the foregoing petition by him subscribed, the facts therein stated are true to the best of his information and belief.

THOMAS AGNELLO.

Sworn to before me this }
2nd day of April, 1923. }

GEORGE J. LEDERER, Notary Public, New York County; Clerk's No. 63, Register's No. 5077; Bronx Co. Clerk's No. 3, Reg.'s No. 21; Kings Co. Clerk's No. 5, Reg.'s No. 5017; Westchester County Clerk & Register; Commission Expires March 30, 1925.

Opinion.

UNITED STATES CIRCUIT COURT OF APPEALS.

FOR THE SECOND CIRCUIT.

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA,
ANTONIO CENTERINO and JAMES PACE,

Plaintiffs-in-Error
(*Defendants below*),

against

THE UNITED STATES OF AMERICA,

Defendant-in-Error,
(*Plaintiff below*).

Before: ROGERS, HOUGH and MANTON, *Circuit Judges*.

O'GORMAN, BATTLE, VANDIVER & LEVY, for Plain-
tiffs-in-Error.

GEORGE GORDON BATTLE, ISAAC H. LEVY, GEORGE C.
DeLACY, of Counsel.

RALPH C. GREENE, United States Attorney for the
Eastern District of New York.

HENRY J. WALSH, Assistant United States Attor-
ney, of Counsel.

This cause comes here on writ of error to the United States District Court for the Eastern District of New York.

ROGERS, *Circuit Judge*. The defendants have been convicted under an indictment which charged them with the crime of conspiracy to commit the offense of selling

heroin and cocaine without having registered or paid the tax prescribed and in violation of the Act of December 17, 1914 (38 St., ch. 1, p. 785), as amended by Sections 1006, 1007 and 1008 of the Revenue Act of 1918 (40 St., ch. 18, pp. 1057, 1132), commonly known as the Harrison Act. Each defendant has been sentenced to be imprisoned for a term of two years at Atlanta Penitentiary and to pay a fine of \$5,000.

The indictment contained two counts. The first charged the offense of conspiring to sell heroin and cocaine in violation of the Harrison Act. The second charged the actual sale of heroin and cocaine in violation of the Act. At the trial and after the testimony was in the defendants moved to dismiss the second count on the ground that it did not allege that the offense occurred within the jurisdiction. This motion was granted and the second count was dismissed as to each of the defendants.

The salient facts are few and simple. On Saturday, January 14th, the defendants Alba and Centerino were approached by two agents in the employ of the Government who stated that they desired to buy some narcotics. The agents were told to return on the following Monday night. At that time they again met Alba and Centerino and were then told that the narcotics would have to be procured. They waited at the house of Alba in Brooklyn while Centerino left for the purpose of obtaining the narcotics. Centerino returned with the defendants Thomas Agnello, Frank Agnello and James Pace. Centerino placed three or four packages on the table and received from Napolitano the sum of \$350 in marked bills. There is testimony to the effect that at the time the packages were placed on the table the defendant, Pace, asked the stool pigeons if they had the money and

were ready for business, and when one of them said "Yes" Frank Agnello took the packages out of his pocket and handed them to Thomas Agnello, who put them on the table.

At this point the officers who had accompanied the Government's agents to the house and had been waiting on the outside, and had observed through a window what took place inside, broke into the room and arrested all the defendants. There were found on the person of Frank Agnello three or four other packages containing cocaine. Thomas Agnello was taken into another room and questioned, whereupon he sought to bribe one of the agents. Following this, several of the officers went to No. 167 Columbia Street, Brooklyn, which was occupied as a grocery store and also as a residence by the Agnello. This was the place from which Centerino, Thomas Agnello, Frank Agnello and James Pace were seen by the officer to leave just after Centerino had gone there to procure the narcotics and from which they returned to the home of Alba with narcotics. On top of a wardrobe in the room occupied by Frank Agnello there was found a can containing cocaine hydrochloride which the officers took into their possession.

It is claimed that the testimony that a can of cocaine hydrochloride was found in the room of Frank Agnello was improperly admitted in evidence since it was obtained through an unlawful search.

And this is the important question in the case. It seems to be admitted that the officers had the right to arrest these defendants without a warrant and had a right without a warrant to search their persons—a crime having been committed in the officers' presence. But it is denied that the officers had any right to go from the place of the arrest to No. 167 Columbia Street, from

which all the defendants but Alba were seen by the officer to emerge a short time before and from which they were supposed to have obtained the drugs which Centerino had informed the Government's agent he was going out to get and there search without a warrant the room of the defendant Frank Agnello. The question thus raised is one of great importance. May an agent of the Government in a case where he can arrest without a warrant and search the person with a warrant, search also without a warrant the home of the person so arrested? Is such a search and seizure to be regarded as such an "unreasonable" search and seizure as violated the constitutional rights of Frank Agnello? If it constituted such a violation we must consider whether the property so seized was improperly received in evidence.

The weight of State authority holds that evidence obtained by an unconstitutional seizure is as much admissible as any other evidence secured by illegal means. *Commonwealth v. Dana*, 2 Met. (Mass.), 329; *Commonwealth v. Tibbets*, 15 Mass., 519; *Chastaing v. State*, 83 Ala., 29; *Scott v. State*, 113 Ala., 64; *Starchman v. State*, 62 Ark., 538; *People v. Alden*, 113 Cal., 264; *State v. Griswold*, 67 Conn., 290; *Williams v. State*, 100 Ga., 511; *Stevison v. Earnest*, 80 Ill., 513, 517; *Trash v. People*, 151 Ill., 523; *State v. Renard*, 50 La. Ann., 662; *Chielt v. Rosenthal*, 100 Mich., 193, 197; *State v. Pomeroy*, 130 Mo., 489, 497; *State v. Atkinson*, 40 S. C., 363, 371; *State v. Mathers*, 64 Vt., 101; *State v. Edwards*, 51 W. Va., 220. And in Wigmore on Evidence, vol. 3, sec. 2183, it is laid down that it has long been established that the admissibility of evidence is not affected by the illegality of the means through which the party has been enabled to obtain it. And see Harvard Law Review, vol. 35, p. 694.

The Federal courts long followed the rule that a collateral inquiry into the mode in which evidence had been obtained would not be allowed when the question was raised for the first time at the trial. See *Adams v. New York*, 192 U. S., 585; *Silverthorne Lumber Co. v. United States*, 251 U. S., 385, 392. In *Weeks v. United States*, 232 U. S., 383, the Court held that if an application for the return of papers unlawfully seized was made before trial and refused, and then at the trial the papers were received in evidence, over objection, the judgment should be reversed. The same doctrine was laid down in *Gouled v. United States*, 255 U. S., 298. That case also asserted that an objection should be sustained and the evidence excluded, although raised for the first time at the trial where the paper had been improperly seized, but the defendant had no knowledge that the Government had possession of the paper until it was offered in evidence. The Court said: "A rule of practice must not be allowed for any technical reason to prevail over a constitutional right." In *Amos v. United States*, 265 U. S., 213, it was held that if it is clear and undisputed that property used in evidence against a defendant on a criminal trial was procured by the Government through an unconstitutional search and seizure his petition for its return is not too late when made immediately after the jury is sworn, and that his motion to exclude the property and testimony concerning it from evidence should not be denied as inviting a collateral issue.

In the case at bar no application for the return of the property alleged to have been unlawfully seized was made either before or at the time of trial. But the evidence that the can was found in the room searched without a warrant was objected to when it was offered on the ground that it violated the defendant's constitutional

rights in that the Government had obtained possession of it through an unlawful search and seizure. The Court overruled the objection and admitted the evidence. This we think was error under the decisions in the *Gould* and *Amos* cases—if the seizure was made in violation of the constitutional provisions now to be considered. To hold otherwise would be to allow a rule of procedure to triumph over a constitutional right, and this the Federal courts cannot suffer to be done.

The Fourth Amendment to the Constitution declares that "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment declares, among other things, that no person "shall be compelled in any criminal case to be a witness against himself." And the same Article also declares that no person shall be deprived of property "without due process of law."

It may be remarked in passing, as the courts have frequently pointed out, that the unreasonable searches and seizures prohibited by the Fourth Amendment are almost always made to obtain evidence and thus indirectly, in a criminal case, compel a man to give evidence against himself which in that class of cases is condemned in the Fifth Amendment. The two Amendments in this respect "run almost into each other." But the historical explanation of the two Amendments is quite distinct. The Fourth Amendment can be traced to an agitation which was carried on in the eighteenth century and especially the agitation of John Wilkes and the famous decision of Lord Camden hereinafter more fully referred to. The Fifth

Amendment is traced back to an agitation conducted in the sixteenth and seventeenth centuries and especially to the agitation of "Freeborn John" Lilburn.

The Fourth Amendment is justly regarded as one of the most important amendments to the Constitution. It recognizes the right of the people to be secure in their persons, houses and effects against unreasonable searches and seizures. The right was not created by the Constitution. It existed as a common law right before the Constitution was adopted. The Amendment, however, established it as a constitutional right which Congress itself cannot violate. *Boyd v. United States*, 116 U. S., 616. The Constitutions of the several States generally contain the same or similar restrictions upon the powers of the governments of the States.

The framers of these constitutional provisions do not undertake to define what searches and seizures are reasonable and what unreasonable. But the intention plainly was to protect the people from unreasonable searches and seizures such as had been practiced in England under general warrants, and, to some extent, in this country in colonial times under so-called writs of assistance. Such searches and seizures the courts held illegal at common law. And the constitutional provision was designed to operate on legislative bodies so as to render ineffectual any attempt by such bodies to legalize by statute what the common law regarded as unlawful because reasonable. It was also intended to operate upon executives and courts, and to make it the duty of the courts to hold invalid every unreasonable search and seizure whether made under the guise of legislative sanction or without the color of any such sanction. *Williams v. State*, 100 Ga., 511, 520.

A search of one's person or premises with a view to

the discovery of some evidence of guilt which may be used in the prosecution of a criminal action is unreasonable if it is made without authority of law. So that it becomes necessary to inquire in any particular case whether the search was made by authority of law. For it is well established that in some cases the law authorizes searches without warrant, while in others searches made even under a warrant may be without authority of law. If a search is made under authority of law it is reasonable. If it is not so made it is unreasonable.

It is the general understanding that the purpose of the Fourth Amendment was to prevent any attempt by legislation or otherwise to authorize or justify any unlawful search or seizure. The restriction was intended to operate upon the executive, legislative and judicial departments of the government. But the question whether a search is reasonable or unreasonable within the meaning of the Fourth Amendment is in all cases a judicial question and no other department of the government by any action it may take can make a search reasonable which the courts regard as "unreasonable." The Circuit Court of Appeals in the Fourth Circuit has held that the Fourth Amendment does not protect a citizen from unreasonable searches except those made or participated in by Federal officers or under Federal process. *Kanellos v. United States*, 282 Fed., 461; *Kirkley v. United States*, 283 Fed., 34. And a like doctrine is asserted by the Circuit Court of Appeals in the Eighth Circuit in *Youngblood v. United States*, 266 Fed., 795. See also *United States v. Burnside*, 273 Fed., 603. In the instant case the search was made by Federal agents.

The general rule is well established that there is no right to search a man's premises and seize his possessions without a search warrant, and that the warrant

cannot issue or if issued is invalid if the search authorized is an unreasonable one, being contrary to law.

That the right to search for and seize private papers even under a search warrant was unknown to the common law seems conclusively shown by Lord Camden's opinion in the well known case of *Entick v. Carrington*, 19 Howell's State Trials, 1029; s. c. 2 Wils. 275, decided in 1765, in the Court of Kings Bench. This right of search and seizure under warrant had been asserted and exercised for a long time before during the arbitrary reigns of the Stuarts and for a long time afterwards, Lord Halifax, Secretary of State, accordingly claimed the right in *Entick v. Carrington*, and the matter was fully and elaborately considered by the court in that case and it was unanimously held that no such right existed, and that it was not supported "by one single citation from any law book extant." The question involved in that case was not whether the papers could be seized without a warrant for the papers had been taken under a warrant, but was whether the warrant could issue for such a purpose. Counsel claimed that the power to issue the warrant was contrary to the genius of the law of England, and that however frequently they had been used since the Revolution that fact did not make them lawful, and that the practice of issuing them originated in the oppression and extortion of lords and great men, and that the custom went "no farther back than 80 years." And counsel declared "most amazing it is they have never before this time been opposed or controverted, considering the great men that have presided in the King's Bench since that time." The Court held that there was no power even in the Secretary of State to issue the warrant and that it was "wholly illegal and void." An attempt having been made by counsel to justify the sei-

zure by referring to the practice for the search and seizure of stolen goods which was then well established Lord Camden called attention to the fact that the right of search for stolen goods had crept into English law by imperceptible practice, and that Lord Coke denied its legality. It is important, too, to note that in searching for stolen goods a search warrant was required and that there must be an oath by the owner that his goods have been stolen and that he has strong reason to believe they are concealed in the place to be searched. The law as laid down in *Entick v. Carrington* has been regarded ever since as settled and Lord Camden's great judgment is one of the landmarks of English liberty. Justice BRADLEY, speaking of it in the Supreme Court in 1885 in *Boyd v. United States*, 116 U. S., 616, 626, said: "It is regarded as one of the permanent monuments of the British Constitution, and is quoted as such by the English authorities on that subject down to the present time."

The use of search warrants is confined to cases of public prosecutions, instituted for the suppression of crime or the detection and punishment of criminals. In such cases their legality has long been recognized as established on the ground of public necessity. In *Adams v. New York*, 192 U. S., 585, 598, the Court said:

"The right to issue a search warrant to discover stolen property or the means of committing crimes, is too long established to require discussion. The right of seizures of lottery tickets and gambling devices, such as policy slips, under such warrants, requires no argument to sustain it at this day."

The doubts which at one time were entertained as to the search of a man's premises for stolen goods, for lottery tickets, gambling devices and the like have not gone

to the right to make the seizure without a warrant, but as to whether the right existed to issue a warrant authorizing the invasion of the premises to make a search for such a purpose.

But it is interesting to observe that the courts have held that a statute authorizing a magistrate or judicial tribunal to issue a search warrant which can be availed of by individuals in the course of civil proceedings is unconstitutional, being in violation of the fundamental principle that every citizen is entitled to be free from all unreasonable searches of his houses and possessions. *Robinson v. Richardson*, 13 Gray (Mass.), 454. And the constitutionality of statutes authorizing the issuance of warrants to search for intoxicating liquors illegally kept for sale have been challenged in the courts. In *State v. Stoffers*, 89 Minn., 205, it was said:

“No one questions the validity of laws providing for the issuing of warrants for the search, seizure and destruction of implements of gaming, lottery tickets, and obscene books, and other similar articles and means of crime. But it has been questioned by some courts whether intoxicating liquors are property of such character as to be subject to the application of this rule. They do not *per se* fall within the rule, but on principle, and the great weight of judicial authority, it must be held that when they are kept for sale in violation of the laws of the state, and are intended to be used as the subject or means of crime, it is a question solely for the lawmaking power to determine whether they ought to be subjected to the rule we have stated. Therefore statutes authorizing the issuance of search warrants to search for intoxicating liquors illegally kept for sale, and directing their seizure when found, and their forfeiture or destruction, are constitutional. See too *State v. Hanson*, 114 Minn., 136.”

In what has been said it appears that the common law jealousy protected even against search warrants a man's immunity in his home against "the prying eyes" of government. It let Chatham in his speech on General Warrants to declare in a familiar passage: "The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement." And the maxim that "every man's house is his castle" has been made a part of our constitutional law which no officer of the Government of the United States can violate.

Not all arrests without a warrant are illegal, and not all searches and seizures without a warrant are prohibited. "But it is nowhere said that there shall be no arrest without a warrant. To have said so would have endangered the safety of society. The felon who is seen to commit murder or robbery must be arrested on the spot or suffered to escape." *Wakely v. Hart*, 6 Binn. Pa., 316. However, an arrest without a warrant has never been lawful except in cases where the public security requires it.

It is universally recognized that a peace officer has the right to arrest without a warrant one whom he finds attempting to commit a felony in his presence, or who is committing or has committed a felony in his presence or within his view. *Kurtz v. Moffit*, 115 U. S., 487. And this rule applies to any offense punishable by imprisonment in a State prison. And it is a general rule that the officer may arrest without a warrant for a misdemeanor committed in his presence. And an officer at common law may arrest without a warrant one whom he has reason-

able or probable grounds to suspect of having committed a felony.

Under the Federal as well as the State statutes to justify search and seizure or arrest without warrant the officer must have direct knowledge through his hearing, sight, or other sense of the commission of the crime. *Elrod v. Moss*, 278 Fed., 123, 130.

The rule as to when a crime is committed in the presence of an officer is well stated in *ex parte Morrill*, 35 Fed., 261, 267, where Judge DEADY held that "A crime is committed in the presence of the officer when the facts and circumstances occurring within his observation, in connection with what, under the circumstances, may be considered as common knowledge, give him probable cause to believe or reasonable ground to suspect, that such is the case. It is not necessary, therefore, that the officer should be an eye or an ear witness of every fact and circumstance involved in the charge, or necessary to the commission of the crime." And it is well settled that where an officer is apprised by any of his senses that a crime is being committed in his presence he may arrest without a warrant. 4 Blackstone's Comm., p. 299; 1 Bishop Crom. Proc., secs. 166-171, 182-184; Bryne Federal Cr. Proc., sec. 10; *O'Connor v. United States*, 281 Fed., 396, 399; *McBride v. United States*, 284 Fed., 416, 419. And it is equally true that in such cases an officer may without a warrant enter a building in which the crime is being committed and may search the same. Wharton's Criminal Procedure, 10th ed., secs. 34, 51. And in the case at bar it is not denied that the agents of the Government had such direct knowledge of the commission of the crime as justified the arrest of the defendants without a warrant and a search of their persons without a warrant.

In the cases in which an officer may make an arrest without a warrant he may without a warrant search the person so arrested. For it is the duty of an officer, making a lawful arrest, to search the person and take from him any articles that may be used in evidence against him. Wharton's Cr. Plead., sec. 60; Roscoe's Cr. Evid., 211; 2 Am. & Eng. Encyc. of Law, 860.

In 25 Am. & Eng. Encyc. of Law, 149, it is laid down that "No distinction is observed between an unauthorized search of the person and one which merely involves an invasion of the citizen's constitutional right to be secure in his house, papers and effects, for none is recognized either by the Federal or State Constitutions, the right to be secure in the lawful possession and enjoyment of property being regarded as no less sacred than the citizen's right to an immunity from an unreasonable search of his person." We may add that the right to be secure in his property is no more sacred than the right to be secure in his person. (And in the cases in which the officer may without a warrant deprive a man of his sacred right to his liberty he may without a warrant deprive him of his no more sacred right of property in the articles that may be used in evidence against him upon the trial for the crime for which he is arrested. His home or his office is not more sacred than his person or his liberty. Such a search and seizure is not, in our opinion, the unreasonable search and seizure which the Fourth Amendment prohibits.)

In *Ganci v. United States*, decided in this Court on January 2, 1923, and not yet reported, we held that a search of Ganci's home made without a search warrant was illegal. It is said that that case is decisive of this. But in that case at the time of the entry and search the officers had never seen or heard of Ganci, who had com-

mitted no crime in their presence. They had arrested Lusco for delivering certain narcotics to one Smith in the officers' presence, and they had some reason to believe that Lusco had obtained them at a certain tenement house to which they saw him go, as they thought, to obtain drugs. After arresting Lusco, who did not mention Ganci, the officers visited the tenement house referred to in which there was a number of separate apartments, one of which was occupied by Ganci. Lusco lived elsewhere. The officers visited each floor of the building making inquiries at each apartment, as they descended, and when they reached the first floor they entered Ganci's premises and the room in which he was lying on his bed. They found a box containing narcotics under a couch which they took possession of and then arrested Ganci. Lusco and Ganci were indicted under the Harrison Act and at the trial the narcotics found under the couch were put in evidence. This Court held, Judge Hough dissenting, that the evidence was improperly admitted, it having been illegally seized—as the search and seizure had been made without a warrant. In that case the majority of the Court thought that under the circumstances Ganci having committed no crime in the presence of the officers the right to enter and search without a warrant did not exist. It cannot be that upon a suspicion that some one in a hotel or apartment house has unlawful possession of narcotics or liquors the officers can enter without a warrant and examine each guest's room or each tenant's apartment. And even if the officers should obtain a warrant authorizing them to search the hotel or the apartment house generally can it be supposed that such a warrant would be valid and authorize such a search and seizure as was made in the *Ganci* case? That case in its facts is plainly distinguishable from the one at

bar. In this case the defendants were all arrested for a crime committed in the officers' presence including Frank Agnello and it was his apartment which alone was searched and from which the cocaine was taken by the officers.

In *United States v. Mitchell*, 274 Fed., 128, 131, a search without warrant had been issued against an apartment house where a number of families resided. The Court referring to it as "an all devouring warrant," declared:

"This of itself is sufficient to condemn it, as it was never claimed that the whole premises should be searched."

In *Silverthorne Lumber Co. v. United States*, 251 U. S., 385, after an arrest of the two Silverthornes at their home, the officers of the Government went to the office of the Silverthorne Lumber Company and took possession of all the books, papers and documents found there and removed them to the office of the District Attorney. This search and removal was not made under the authority of a search warrant. As no crime had been committed in the presence of the officers they had no right to make a search without a warrant. The mere fact of the arrest of a person for a crime not committed in an officer's presence certainly gives no right to search his house or his office without a warrant. That case is not at all decisive of the one now before the Court, as in this case the crime was one committed in the officers' presence of the agents of the Government, who made the arrest and search.

We may refer to a few recent cases in which the courts have upheld the right to search the premises where a crime was committed in the presence of the officers.

In *Herine v. United States*, 276 Fed., 806, certain police officers of the City of San Francisco having been informed that the peace and quiet of people were being disturbed by loud and boisterous noise in a certain apartment in that city went to the place and heard the boisterous noises and going to the room found the doors open and saw bottles of intoxicating liquors on the table and glasses. They entered the rooms and found a number of men and women therein, "all of whom were drunk, noisy, boisterous and disturbing the peace." They found there numerous bottles and kegs containing sherry and port wine and the defendant told the officers he was selling the wine for 25 cents per drink. Thereupon they placed the defendant under arrest and took possession of the liquor. The seizure of the liquor under such circumstances, without a warrant, was held by the Circuit Court of Appeals for the Ninth Circuit not to violate the Fourth Amendment.

The same Court in *Vachina v. United States*, 283 Fed., 35, held that where a bottle and demijohn containing intoxicating liquor unlawfully in defendant's possession were in plain sight when officers entered a kitchen in the rear of his soft drink barroom, the seizure was legal whether or not they had a valid search warrant. The case went upon the theory that the defendant was engaged, in the presence of the officers, in the actual commission of an offense denounced by the law in that he had possession of intoxicating liquor in his place of business, and that the officers without a warrant might in such a case seize the instrument of the crime.

The same Court in *Kathriner v. United States*, 276 Fed., 808, also held a seizure of intoxicating liquor without a warrant not unlawful. In that case the officers entered a soft drink establishment, formerly a saloon,

and found the bartender behind the bar. An officer jumped over the bar and seized liquor found behind the bar. The want of a warrant did not make the seizure unlawful.

In *United States v. Holsinger*, 284 Fed., 585, District Judge Peck not only held that prohibition agents were entitled without warrant to seize from a trunk intoxicating liquor which was being unlawfully transported, but also held in a thoughtful and well reasoned opinion that prohibition agents may search a licensed brewery without a warrant, and seize liquor unlawfully manufactured therein, the liquor having an alcoholic content in excess of one-half of one per cent. And a motion to exclude the liquor from evidence was overruled. The justification of the seizure of the liquor from the truck was based upon the theory that an offense against the United States was being committed in the actual presence of the officers in its unlawful transportation. In that case, however, the right to search the brewery without a warrant was based upon certain statutory provisions which conferred upon an inspector of the Internal Revenue Department the right to enter in the day time any building where any objects subject to tax are being made so far as is necessary for the purpose of examining the same, and which invested the agents charged with the enforcement of the Prohibition Act with the powers possessed by the Commissioner of Internal Revenue under Section 3177 of the Revised Statutes.

In *McBride v. United States*, 284 Fed., 416, the officers went on the premises without a search warrant and seized a still. They justified their entry and seizure on the ground that they entered the stable after smelling fumes of whiskey then being made in violation of law and that they then seized the property as forfeited to

the United States. The Circuit Court of Appeals for the Fifth Circuit held that when an officer is apprised by any of his senses that a crime is being committed, it is being committed in his presence, and that the search and seizure in this case were therefore legal. See *Lambert v. United States*, 282 Fed., 413; *Bell v. United States*, 285 Fed., 145.

In *People v. Cona*, 180 Mich., 641, the defendant was arrested for a murder committed on the street in the presence of an officer. The defendant at the time of his crime fled and was later arrested in his home. At the trial a policeman gave evidence to the effect that he found two revolvers in a sewing machine drawer in the house in which the defendant was arrested. It was claimed that the seizure of the revolvers was in violation of the Federal Constitution, citing *Weeks v. United States*, 232 U. S., 383. The Court did not point out in its opinion that the restriction in the Federal Constitution has no application to state officers, although it said that a reading of the opinion of the *Weeks* case made it apparent that the principles which that case laid down were without application to the case then before the Court. The objection raised was disposed of by saying that a reading of the opinion in *Weeks v. United States*, *supra*, "makes it apparent that the principles there announced and relied upon by the defendant are not applicable in the case at bar." The Court sustained the legality of the seizure of the revolvers, citing *Smith v. Jerome*, 47 Misc. Rep., 22, 93 N. Y. Supp., 202, quoting therefrom the following passage: "The police have the power and it is also their duty to search the person of one lawfully arrested, and also the room or place in which he is arrested, and also any other place to which they can get lawful access, for the articles that may be used in evidence to prove the charge on which he is arrested."

Judge GAYNOR in his opinion in the New York case comments on the fact that the authorities on the subject seem to be few, and adds that it is "only because the thing has seldom, if ever, been questioned."

Whether a search or seizure in a criminal case is or is not unreasonable must necessarily be determined according to the facts and circumstances of the particular case. In the instant case we think that what the defendants did in the presence of the agents of the Government was sufficient to justify not only the arrest and search of their persons but also the search of the home of one of them under the circumstances disclosed.

In the case at bar, as we have seen, the persons making the arrest were apprised by what they saw that a crime was being committed in their presence, they made the arrests without a warrant and they made immediate search of the persons they had placed under arrest and thereafter immediate search was made of the room of one of the arrested persons, Frank Agnello, to whose premises Centerino, one of the defendants, had gone a short time before after telling one of the Government's agents that he did not have the cocaine but would have to go and get it. Centerino in about five minutes came out of Agnello's premises, at No. 167 Columbia Street, accompanied by the two Agnellos and Pace. They went directly to Alba's house, Alba having remained there. The agents looking through the window in Alba's house saw all the defendants sitting around the table and upon it the packages of cocaine. The arrests followed and then the search of the persons arrested and the search of Frank Agnello's premises, where they found and took possession of the can of cocaine which was offered in evidence. The agents had such direct and personal knowledge as justified the search of the premises of Agnello—as fully as it did the search of his person.

Before concluding this opinion we may call attention to the fact that United States Marshals and their deputies have in each State the same powers in executing the laws of the United States as the sheriffs and their deputies in each State have by law in executing the laws thereof. U. S. Rev. St., Sec. 788. The statute invests the marshal and his deputies in his district with all the powers, common law and statutory, which a sheriff and his deputies have in the State in which his district lies. *Carico v. Wilmore*, 51 Fed., 196, 199.

The Code of Criminal Procedure of the State of New York (1907), Section 177, provides that a peace officer may, without a warrant, arrest a person:

1. For a crime committed or attempted in his presence.
2. When the person arrested has committed a felony, although not in his presence.
3. When a felony has in fact been committed and he has reasonable cause for believing the person to be arrested to have committed it.

These provisions are in accord with the rule at common law. See *People ex rel. Kingsley*, 22 Hun (N. Y.), 300, 301.

The same Code in Section 183 also provides that a private person may arrest another in the following cases:

1. For a crime committed or attempted in his presence;
2. When the person arrested has committed a felony, although not in his presence.

And this appears to have been the law of New York irrespective of statute. See *Holley v. Mix*, 3 Wend., 353 (1829).

The defendants herein were not, however, arrested by the United States Marshal or any of his deputies. The persons by whom they were placed under arrest and who searched the premises of the defendant, Frank Agnello, and took possession of the can of cocaine, seem to have been agents of the Commissioner of Internal Revenue, and as such we are not aware that they possess any special authority to make arrests. But a private person under the common law has a right, and it is his duty to make an arrest without a warrant in certain cases. A private person has the same right as an officer to arrest without a warrant if a felony is committed in his presence. *Rex v. Howarth*, 1 Moody c. c., 207; *People v. Governale*, 193 N. Y., 581; *Brooks v. Commonwealth*, 61 Pa., 352; *State v. Mowry*, 37 Kans., 369; *Kennedy v. State*, 107 Ind., 144; *Kercheval v. State*, 46 Ind., 120. And in the cases in which a private person can arrest without a warrant, he is entitled to make a search of his person and of his premises also without a warrant. As a private person has the same power as a peace officer to make an arrest, if the crime has been actually committed in his presence, and it is not disputed that in the case at bar the crime was committed in the presence of those who made the arrest, the cases to which we have referred in the course of this opinion sustaining the right of a peace officer to arrest and search without a warrant where the crime is committed in the presence of the officer are, of course, applicable to the facts of this case, although the persons making the arrest and search may have in such matters no greater rights than those possessed by any other private citizen in whose presence a crime is committed.

Judgment affirmed.

Concurring Opinion.

UNITED STATES CIRCUIT COURT OF APPEALS.

FOR THE SECOND CIRCUIT.

Before: ROGERS, HOUGH and MANTON, *Circuit Judges.*

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA,
ANTONIO CENTERINO and JAMES PACE,

Plaintiffs-in-error
(Defendants below),

against

THE UNITED STATES OF AMERICA,

Defendants-in-error
(Plaintiffs below).

HOUGH, C. J. (concurring);

In result I agree with Judge ROGERS, but cannot follow the reasoning by which result is reached.

The constitutional rule is simple in form, and single in statement, there are no sub-heads and no exceptions. That the right of the people to be secure in their houses and effects against unreasonable searches and seizure shall not be violated, is the rule.

As the expression of one excludes the other—there is no right in the people to be secure from reasonable searches and seizures. Consequently the only question in every case is whether under the evidence there was unreasonable action.

Unreasonableness is matter of fact, although it is also one of those fact questions which, because it has

been decided by generations of judges instead of being left to juries, is commonly denominated a question of law.

To say that a man may be searched after arrest, though not before; or that a place or house may be searched when a crime is there seen to be committed, and not otherwise, is to introduce false standards; the question always remains—Was the search or seizure unreasonable? The arrest is no more than evidence, that suspicion had come near enough to certainty to make both arrest and search reasonable. If it appeared, however, that the arrest was only for the purpose of search, the evidence would be overwhelming that the whole procedure was unreasonable, unconstitutional and actionable.

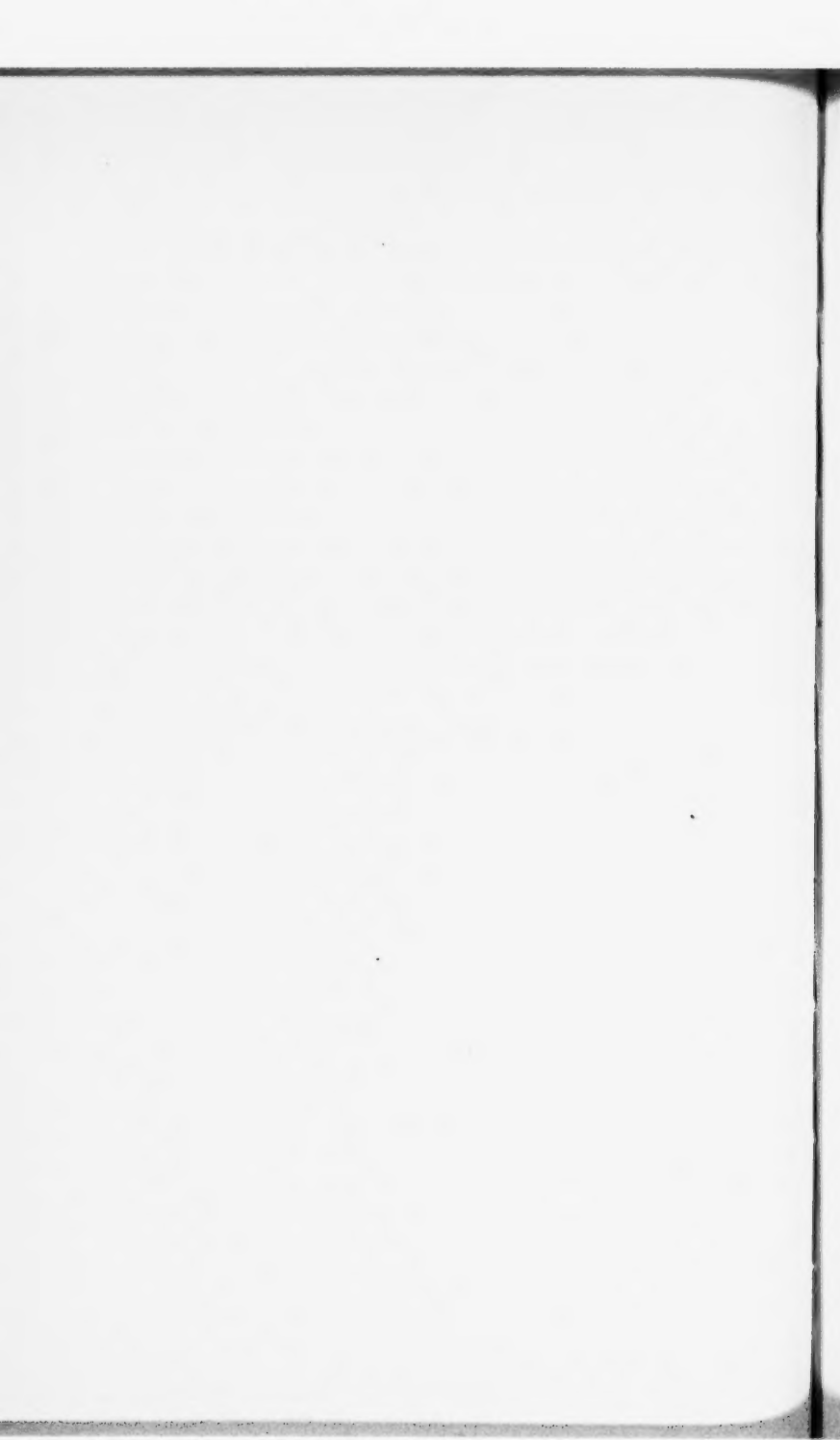
To say that a crime was seen to be committed, is but saying that the observer became a competent witness in proving criminal act and intent. Undoubtedly the phrase has been used so long that it has acquired a technical meaning, *to wit*, acquisition by the peace officer, through one of his senses, of knowledge of facts which in a reasonable man induce belief that crime has been committed.

An officer who hears an explosion as of firearms in a residence and at once sees a man leave the building; one who smells liquor in a house and sees the proprietor, or who by any sense becomes aware of phenomena reasonably suggestive of the proximity of crime and a criminal, may arrest and search; that it finally appears that no crime was committed, may not and usually does not render either arrest or search unreasonable.

In the present case the matters seen and heard by the officers, were most persuasive of crime committed; arrests were fully warranted and so was search, not only of the place or house in which defendants met, but of any other place reasonably indicated by surrounding

circumstances as containing incriminating matters. No. 167 Columbia Street was emphatically such a place; incriminating evidence was there discovered; and since it was the result of a reasonable search and seizure, it was properly admitted in evidence.

The foregoing train of thought led to my dissent with the *Ganci* case. The more that proceeding is examined, the more it resembles this in every essential particular. In each a probable, almost certain criminal was seen to leave a certain house, in each the criminal transfer or sale was watched, in each the house left by the criminal was searched and in each incriminating evidence of the crime observed was found. The only difference is that the *Ganci* search revealed an additional criminal, who naturally complained about it. But the difference is immaterial. Consequently I am unable to differentiate between that case and this, when the single question is as to reasonableness.



Supreme Court of the United States.

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN ALBA,
ANTONIO CENTERINO and JAMES PACE, *Petitioners,*

against

THE UNITED STATES OF AMERICA, *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Petitioners were convicted under an indictment in the United States District Court for the Eastern District of New York, which charged them with the crime of conspiracy to commit the offense of selling heroin and cocaine without having registered or paid the tax prescribed, and in violation of the Harrison Act. Each defendant was sentenced to be imprisoned for a term of two years at Atlanta Penitentiary and to pay a fine of Five Thousand Dollars (\$5,000).

Writ of error was taken to the United States Circuit Court of Appeals for the Second Circuit. In that court the following three questions were presented.

1. The Court erred in admitting evidence obtained by unlawful search and seizure.
2. The indictment did not state facts sufficient to constitute a crime.
3. The Court erred in refusing to require the witness Dispenza to testify truthfully as to his address.

The opinion of the Circuit Court of Appeals discusses only the first question. The opinion reads in part as follows:

"It is claimed that the testimony that a can of cocaine hydrochloride was found in the room of Frank Agnello was improperly admitted in evidence since it was obtained through an unlawful search. And this is the important question in the case."

* * * * *

"The question thus raised is one of great importance. May an agent of the Government in a case where he can arrest without a warrant and search the person without a warrant, search also without a warrant the home of the person so arrested? Is such a search and seizure to be regarded as such an 'unreasonable' search and seizure as violated the constitutional rights of Frank Agnello? If it constituted such a violation we must consider whether the property so seized was improperly received in evidence."

* * * * *

"And in the cases in which the officer may without a warrant deprive a man of his sacred right to his liberty he may without a warrant deprive him of his no more sacred right of property in the articles that may be used in evidence against him upon the trial for the crime for which he is arrested. His home or his office is not more sacred than his person or his liberty. Such a search and seizure is not, in our opinion, the unreasonable search and seizure which the Fourth Amendment prohibits."

In the case of *Ganci v. United States*, decided in the Circuit Court of Appeals for the Second Circuit on January 2, 1923, it was held that a search of Ganci's home made without a search warrant was illegal. Judge

HOUGH dissented in the *Ganci* case, and in this case, in his concurring opinion he states:

"The foregoing train of thought led to my dissent with the *Ganci* case. The more that proceeding is examined, the more it resembles this in every essential particular."

Judge MAYER wrote the prevailing opinion in the *Ganci* case. Judge HOUGH dissented. Judge ROGERS wrote the prevailing opinion in the present case. Judge HOUGH concurs, but dissents from the reasoning of that opinion. It is thus apparent that the question is one of considerable doubt. And it is emphasized in the opinion of Judge ROGERS in this case that the question is one of great importance. It involves constitutional rights. It is a question that will arise with extreme frequency, in connection with prosecutions under the National Prohibition Act, under the Harrison Act and other similar acts. The view taken by the Court in this case is a radical departure from the well established principles enunciated time and again by the Supreme Court. The fact that this is a departure from the principles laid down by the Supreme Court is clearly recognized by Judge HOUGH in his dissenting opinion in the *Ganci* case.

The Judges of the Circuit Court of Appeals have been led by the conditions of good order that prevail in New York to offer a progressive interpretation of the constitutional safeguards contained in the Fourth and Fifth Amendments. Not alone is this not justified in law, but in fact, these provisions must be construed with reference to the conditions existing throughout the country and not alone in the City or State of New York. And until these amendments are removed from the constitution or modified, it must be accepted with finality that the conditions prevailing throughout the United States do

not justify any relaxation of the principles of these amendments. The Circuit Court of Appeals, sitting in New York, may be impressed with the necessity of removing "by controlling authority this final manacle which has been put on crime prevention" (Opinion of Judge HOUGH in *Ganci* case). But the country at large is more concerned that the rights of the people shall be secured against the inroads and encroachments of unrestrained executive authorities. The vast increase of these executive authorities in recent years, with the vast increase in their functions and activities, make more necessary the preservation of the liberties guaranteed by the Constitutional Amendments.

The principle announced by the Circuit Court of Appeals in this case is an extraordinary departure from prevailing decisions. It is justified by reasoning, which is not alone utterly insufficient, but is subversive of the result reached.

The reasoning of the Circuit Court of Appeals is as follows:

An arrest in this case was made without a warrant by agents of the Commissioner of Internal Revenue. As such they do not possess any special authority to make arrests. A private person has the same right as a peace officer to arrest without a warrant if a felony is committed in his presence. In this case the opinion states that the felony, to wit, the conspiracy, was committed in the presence of the revenue agents.

If the felony is committed in the presence of the revenue agents, who concededly have only the capacity of private persons, and if an arrest is thereupon made without warrant, it is the right of these private persons, acting under the guise of the authority vested in them as officers or agents of the United States, to search the

homes of the offenders, although these homes may be places far apart from the scene of the actual commission of the felony.

And if in such a search, there is obtained any *evidence* of the commission of the felony this evidence may be offered and received upon the trial to establish the essential preliminary and fundamental fact, which alone in the opinion of the Court justifies the search—the actual commission of a felony in the presence of the revenue agents.

To justify the search, a felony must have been committed in the presence of the officers. To establish that the felony was committed, the fruits of the search may be offered in evidence. The legal insufficiency and inaccuracy of this reasoning is apparent. And it is pointed out with emphasis by Judge HOUGH in his concurring opinion. He says:

“To say that a man may be searched after arrest, though not before; or that a place or house may be searched when a crime is there seen to be committed, and not otherwise, is to introduce false standards; the question always remains—Was the search or seizure unreasonable? The arrest is no more than evidence, that suspicion had come near enough to certainty to make both arrest and search reasonable. If it appeared, however, that the arrest was only for the purpose of search, the evidence would be overwhelming, that the whole procedure was unreasonable, unconstitutional and actionable.”

Judge HOUGH is correct in this criticism of the concurring opinion. If the reasonableness of the search is to be determined by the reasonableness of the arrest, then that which was obtained in the search cannot be used to support the right to arrest. The only logical basis for

justifying a search is that the person making the arrest had reasonable ground to believe that a felony was being committed.

And Judge HOUGH contends for this standard.

But if the reasonable suspicion of the revenue agents that a crime has been committed justifies a search, then a search may be made without arrest. And the reasonableness of the search does not in the least depend upon whether or not a crime actually was committed, but whether or not the revenue agents were justified in their suspicions. As Judge HOUGH says:

"That it finally appears that no crime was committed, may not and usually does not render either arrest or search unreasonable."

So that we have this extraordinary situation,—that the reasonable suspicion of a private person is to take the place of the constitutional requirement that search of a person's home may be had only "upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." The reasonable suspicion takes the place of the warrant. And who determines whether there was reasonable suspicion, so as to justify the admission in evidence of the things seized? Manifestly it must be determined as a matter of law by the Court. And if upon the facts presented the Court deems that the revenue agent was reasonably suspicious that a crime was being committed, then the thing seized may be received in evidence, the warrant required as a condition of search of private homes, the complaint describing the place to be searched or the thing to be seized, is replaced by the determination of the Court made long after the event. And what will so much govern and control this

determination as the result of the search? If the search disclosed matters which may be evidence of a crime, then, of course, the person was justified in his suspicion, and in making the search. So that we have thousands of revenue agents endowed with the right to search at will the homes of private citizens, subject only to the condition that they shall be successful in finding some evidence of the commission of a crime.

And all this is to be taken in connection with the fact that most revenue offenses are declared to be misdemeanors by statute, but by artifice on the part of prosecuting attorneys may be sublimated into felonies.

The Harrison Act does not, and cannot without violation of the reserved police powers of the State, make mere possession of heroin and cocaine an offense, for Section 1 of the Act provides that every person "who imports, manufactures, produces, compounds, sells, deals in, dispenses or gives away opium or cocoa leaves," etc., shall register with the Collector of Internal Revenue. No tax is imposed upon the *possession* of heroin or cocaine. The seizure of the can of cocaine cannot therefore be justified as the seizure of property forfeited to the United States.

Citation of many authorities in support of the proposition that the rule adopted by the Circuit Court of Appeals in this case is entirely unjustified by the previous decisions of this Court is unnecessary. It is sufficient to refer to the recent cases of *Gould v. United States*, 255 U. S., 298, and *Amos v. United States*, 255 U. S., 313.

"The wording of the Fourth Amendment implies that search warrants were in familiar use when the Constitution was adopted and, plainly, that when issued 'upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things

to be seized,' searches, and seizures made under them, are to be regarded as not unreasonable, and therefore not prohibited by the Amendment. Searches and seizures are as constitutional under the Amendment when made under valid search warrants as they are unconstitutional, because unreasonable, when made without them,—the permission of the Amendment has the same constitutional warrant as the prohibition has, and the definition of the former restrains the scope of the latter. All of this is abundantly recognized in the opinions of the *Boyd* and *Weeks* cases, *supra*, in which it is pointed out that at the time the Constitution was adopted stolen or forfeited property, or property liable to duties and concealed to avoid payment of them, excisable articles and books required by law to be kept with respect to them, counterfeited coin, burglars' tools and weapons, implements of gambling 'and many other things of like character' might be searched for in home or office and if found might be seized under search warrants lawfully applied for, issued and executed."

Gould v. United States, 255 U. S., at p. 308.

It thus appears that the instances in which property may be searched for under search warrants issued upon probable cause, supported by oath or affirmation, are limited to certain classes. These classes were recognized in the law at the time the constitutional amendment was adopted. The Supreme Court has shown no tendency whatever to extend the classes of cases in which search warrants may be issued. There is no authority in law for the issuance of a search warrant to discover the possession of heroin or cocaine.

But never has this Court recognized in the remotest way the right to search without warrant premises upon which no crime was committed.

If a search of a man's home, without warrant, is to be permitted in cases where revenue agents are suspicious that a crime has been committed, if such searches are justified in law, if the revenue agent is authorized to enter, search and seize, then it follows that whatever is so obtained may be used in evidence. And it may be used in evidence not alone in support of the offense concerning which the revenue agent had his suspicions, but in support of any offense whatsoever. Once the search is justified, there is no restriction upon the use as evidence of the property seized. If there is "no reason why property seized under a valid search warrant, when thus lawfully obtained by the Government, may not be used in the prosecution of a suspected person for a crime other than that which may have been described in the affidavit as having been committed by him" (*Gouled* case at p. 311), then it necessarily follows that property seized under an authorized search, although made without warrant, may be so used.

If revenue agents, having suspicion which the Court upon the trial deems justified, that a felony has been committed, are authorized to make search for evidence of that crime, then what is there to prevent agents of the Treasury Department, who have suspicion that a taxpayer has made false oath in the return of his income taxes, entering the home or office of the taxpayer and seizing all his books and papers? And if upon the trial these books and papers support the suspicion of the revenue agent, the Court must deem that the suspicion was well founded, and will permit the books and papers to be received in evidence.

With reference to the second point urged in the Circuit Court of Appeals, it is not necessary to do more

than call the attention of the Court to the point presented. A substantive offense under the Harrison Act must involve a sale within some revenue district of the United States. For it makes it an offense to sell only in case the person selling has not registered with the Collector of Internal Revenue of the district where the business is to be carried on. A conspiracy to commit this offense must be a conspiracy to sell at some place within the United States. In a charge of conspiracy it is not, of course, necessary to mention the particular place, since the conspirators may not have themselves definitely agreed upon the place. But it is certainly necessary that the charge shall be a conspiracy to sell within the United States.

With reference to the third point presented the attention of the Court is called to the proceedings as they appear in the bill of exceptions at folio 1391. The testimony of this witness is the only testimony in the case that directly implicates the defendants, Thomas Agnello, Frank Agnello and Pace. He was a hired informer. He gave untruthful testimony as to his address. The Court sustained him in his refusal to give his correct address. This refusal was accompanied by the utterly unjustified statement of the prosecuting attorney: "I don't want this man's wife and child murdered" (fol. 1391). The Court had to be importuned more than once before there was finally obtained a feeble condemnation of this statement of the prosecuting attorney.

For the foregoing reasons it is respectfully submitted that a writ of certiorari should be granted.

The constitutional question involved is one as to which there has been considerable doubt and difference in the Circuit Court of Appeals for the Second Circuit. It is a

situation which will arise with the greatest frequency. If the decision in this case is allowed to prevail, it will amount to an actual repudiation of the previous decisions of this Court, and will be a complete annihilation of the safeguard of the Fourth and Fifth Amendments.

All of which is respectfully submitted.

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New York City.

Reported N. Y. Law Journal, Jan. 16, 1923.

UNITED STATES CIRCUIT COURT OF APPEALS.

SECOND CIRCUIT.

Before: ROGERS, HOUGH and MAYER, *Circuit Judges.*

GIUSEPPE GANCI,

Plaintiff-in-error,

against

UNITED STATES OF AMERICA,

Defendant-in-error.

MAYER, *Circuit Judge.*—Ganci and one Emanuel Lusco were jointly indicted under Sections 1, 2 and 8 of the so-called Harrison Act of December 17, 1914, as amended by the Act of February 24, 1919.

The indictment contained six counts. Eliminating indictment language, the charges of the respective counts may be summarized as follows: (1) that defendants sold a quantity of heroin without having registered with the collector of internal revenue and without having paid the tax as provided by law; (2) that defendants sold the heroin without an order therefor upon a form issued by the collector of internal revenue; (3) that defendants sold a quantity of cocaine without having registered and without having paid the tax; (4) that defendants sold and delivered the cocaine without the production and delivery of an order form; (5) that from June 1, 1921, to and including November 3, 1921, defendants "were then and there dealing in" opium, morphine, heroin and cocaine "and so were persons required to register

and pay the special tax as required by" the Act of December 17, 1914, as amended, and that defendants had not registered and had not paid the tax; (6) that from June 1, 1921, to and including November 3, 1921, defendants had unlawfully in their possession heroin, morphine and cocaine without having registered and without having paid the special tax.

Lusco was convicted under all six counts. Ganci was acquitted on Counts 1, 2, 3 and 4 and convicted under Counts 5 and 6. The fifth and sixth counts were laid respectively under Sections 1 and 8 of the act. The pertinent parts of these sections are quoted in the margin.

To establish the offenses charged the government called three witnesses.

Joseph Smith testified that he was a peddler of narcotics and that about 3 o'clock on the afternoon of November 3, 1921, he was arrested by Manning and Pacetta, agents of the so-called Narcotic Squad of the Internal Revenue Department. Smith said to Manning: "Why take me, I am only a little fellow; why don't you get a big fellow? I will give you a big connection if you turn around and give me money to go and buy the stuff." The "big fellow" was defendant Lusco, from whom, as Smith testified, he had been buying narcotics for seven months twice a week. A plan for the detection of Lusco was then arranged. Smith informed the officers that his former purchases from Lusco usually amounted to about \$80—\$60 for heroin and \$20 for cocaine. Manning gave Smith \$80 in marked bills and the usual protection of searching Smith was taken, so that Smith would have no narcotics on his person and no money except the marked bills. Lusco lived at No. 124 Seventh avenue, which was at about Nineteenth street. The office of the Narcotic Squad was at Twenty-seventh street, and Smith left

there to proceed to Lusco's home with the officers closely following Smith. Smith went into Lusco's apartment and found him in bed, and, according to Smith's testimony, he told Lusco that he needed some narcotics at once, whereupon Lusco started to dress himself and asked Smith how much he wanted. To this Smith answered that he wanted 100 grams—a package of H. and C. (H. for heroin and C. for cocaine); but Lusco told Smith that he did not have any C., but that he had H., and Smith stated that he would take the H. Lusco told Smith to meet him downstairs. Smith thereupon went downstairs and went into a baker's shop, and after he came out Lusco's wife approached Smith and called him upstairs. When Smith went upstairs on this second occasion Lusco showed him a very small quantity of cocaine, for which Smith gave Lusco \$4 and Lusco then told Smith that the latter had better give him the money for the heroin. Thereupon Smith gave Lusco \$60 for the heroin. Smith again went downstairs, and in about ten minutes was joined by Lusco. These two proceeded through Eighteenth street to Eighth avenue, got on an Eighth avenue car and went up to Thirty-fifth street and Eighth avenue. They then walked west until they reached an opera house building between Eighth and Ninth avenues, when Lusco told Smith to wait until he came back. In about half an hour, according to Smith, Lusco returned with a package of heroin.

Manning had followed Lusco to the premises No. 419 West Thirty-fifth street, and these were the premises which Lusco entered and in which he remained, according to Manning, for about ten or fifteen minutes. After Lusco came out of these premises Manning followed him to the point where Lusco met Smith, saw Lusco hand Smith a newspaper, saw Smith put this in his pocket,

thereupon arrested Smith and took the package from him, and Pacetta, another government agent, also then arrested Lusco. The package contained heroin. The testimony of Pacetta accorded substantially with that of Manning in respect of the matters set forth (*supra*).

Both Smith and Lusco were taken to the police station at Thirtieth street and then Manning went back to his office and was joined by several other government agents. Manning then went with his associates to No. 419 West Thirty-fifth street.

It will be noted that up to this time no information of any kind had been given as to Ganci. Smith had said nothing to the officers concerning Ganci.

On the trial Smith testified that when he visited Lusco on occasions prior to November 3 he had sometimes seen Ganci present, but had never had any conversations with him. Even this information as to seeing Ganci with Lusco was not communicated by Smith to the officers. The most that can be said is that the officers had reasonable ground to believe that Lusco had obtained the narcotics from some person or place in No. 419 West Thirty-fifth street.

Ganci had conducted a barber shop at No. 419 West Thirty-fifth street for sixteen years and lived in four rooms in the rear of the shop with his wife and six children. The first room was the dining room, the second the bedroom of Ganci and a son, the third the kitchen and the fourth the bedroom of his wife and his other children.

After Manning and his associates arrived at 419 West Thirty-fifth street he went all through the house, which apparently was a tenement dwelling. He did not go into the barber shop first. His search may best be described in his own words: "I went to the top floor of

the building first and inquired for Emanuel Lusco. I did not search that apartment. Then I went down to the next floor and there I inquired for Emanuel Lusco, and they told me there they didn't know him. I did not search that apartment. I don't remember whether there were Italian people living on the top floor or on the next to the top floor. Then I went on the next floor below that and made the same inquiry there. We intended to search that apartment, but we did not. I looked under the sink, pulled the curtains from the sink, the man looked to be all right, and I said 'All right.' That is the only place I looked, under the sink. I didn't expect to find narcotics under the sink. I just looked for them. Then we went down to the candy store. We did not search that place. * * * I had each floor watched, yes. I didn't know Ganci before this, never saw him in my life; never heard of him. * * * I was looking for anybody selling dope. I may have been looking for Ganci. I didn't know him, neither by name nor by sight, before this day. When I got back there the last place I visited was the barber shop, that is right. When I got into the barber shop, there was nobody there in the barber shop and I went through the house."

In the second room back of the barber shop Manning found Ganci lying on the bed. Ganci was "the first Italian" Manning found in the building. "The minute you got in there," he was asked, "you grabbed him and said to him where is the stuff?" to which Manning answered, "That is the fact." Ganci said that he did not have the "stuff" and that he did not know what Manning wanted. Thereupon, Manning began to search, and underneath the sofa he found a box or package. This box or package contained narcotics and the box and contents were marked as exhibits. Thereafter, according to Manning,

Ganci said he had been selling this "stuff" for about a year.

Manning further testified that he told Ganci that the officers intended to search the place thoroughly and that he would tear down the pictures off the wall and everything else unless "he gave me all the stuff that was there." Ganci said that the only thing he had left was some waxpaper boxes and some bottles. These Ganci produced.

Pacetta was present throughout this entry into and search of Ganci's premises and substantially corroborated the testimony of Manning.

The box found by the officers and the contents thereof made a formidable array of exhibits as follows: Exhibit 4, box; Exhibit 5, a number of small packages of heroin; Exhibit 6, a set of weighing scales; Exhibit 7, three 100-gram packages of heroin; Exhibit 8, two packages of morphine sulphate; Exhibit 9, a can of heroin in powdered form. After these exhibits were marked in evidence the prosecuting attorney stated, "And here are some more packages of cocaine and heroin. I will offer the rest, gentlemen, all the little bottles, about four dozen empty jars."

Ganci took the stand, testified that he had been in the United States for thirty-two years, had never been charged with any crime, and, as stated (*supra*), had conducted the barber shop for sixteen years and lived in the rear thereof with his wife and children. He denied knowing Lusco and gave an explanation of the presence of the box and contents, which, if believed, was consistent with innocence. At the time the exhibits were offered and received in evidence no objection nor appropriate motion to exclude was made, but at the conclusion of Ganci's testimony his counsel moved "to strike out the

testimony of the officer that was given with relation to taking a box out of Ganci's place, on the ground that it appears from their evidence and from their testimony that they had no warrant of seizure; that they went into his place of business, to his home, without any warrant of seizure, and that they took out of his place a box which they claim is a box which they produce here now, which is illegal evidence and has no place here."

This motion was denied and exception duly taken. As Lusco and Ganci were tried together, counsel for Lusco then called Lusco's wife and then Lusco, who was the last witness.

In view of the verdict of the jury and the fact that we find no errors, except as set forth (*infra*) recitation of further details is unnecessary. The verdict of not guilty in favor of Ganci in respect of Counts 1, 2, 3 and 4 was tantamount to a finding that Ganci had not engaged in any direct sale. In view of the complete absence of any other evidence implicating Ganci proof of the possession of the narcotics was vital to conviction under the fifth and sixth counts, for Section 8 makes possession by a person not registered and who has not paid the special tax presumptive evidence of a violation of Sections 1 and 8.

The assignments and amended assignments of error bring up the question as to whether Ganci's rights under the Fourth and Fifth Amendments were violated.

The Fourth Amendment reads: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Admittedly, there was no search warrant, but the question here considered can be well tested by applying the provisions as to a search warrant. Could Manning or Pacetta have *particularly* described the place to be searched and the person or things to be seized? Obviously not. All they could have presented by oath or affirmation upon an application for a search warrant was that they suspected that somewhere in a building having many apartments there might be some narcotics. They had ground to believe that Lusco obtained his narcotics from somebody in the building, but their conduct in visiting various apartments and finally visiting Ganci, who was the "first Italian that * * *" Manning "found in the building" perfectly shows that they were on a roving expedition with no knowledge or even suspicion to justify their entrance into a particular person's home. The officers had never heard of Ganci; they had seen Lusco enter this tenement building, but they had not seen Lusco enter or leave Ganci's barber shop or living rooms, and, in brief, they had not even the slightest information upon which to predicate "probable cause."

It is, of course, true that in certain circumstances a search warrant is not necessary, and also that the Fourth Amendment does not safeguard against any search or seizure, but only against "unreasonable" searches and seizures.

An illustration of a search which was not unreasonable is found in the recent case of *Lambert v. United States* (282 F. R., 413), a case wholly different from that at bar, because of Lambert's actions made known to the officers prior to search and seizure. The law is succinctly stated at the conclusion of the opinion as follows: "What is prohibited by the Fourth Amendment of the constitution, as will be seen from the foregoing, is the unreasonable search or seizure of the person, home, pa-

pers, or effects of any of the people of this country without a warrant issued upon reasonable cause, supported by oath or affirmation particularly describing the place to be searched and the person or thing to be seized. It is not claimed that either of the officers who made the search and seizure here involved acted by virtue of any warrant, or that they made any attempt to procure a warrant upon the information conveyed to them by Edison. Under the circumstances of the case, was that essential?

The prohibition of the Fourth Amendment is against all *unreasonable* searches and seizures. Whether such search or seizure is or is not unreasonable must necessarily be determined *according to the facts and circumstances of the particular case*. We think the actions of the plaintiff in error in the present case, as disclosed by the testimony of Edison, were of themselves enough to justify the officers in believing that Lambert was at the time actually engaged in the commission of the crime defined and denounced by the national Prohibition Act, and that they were therefore justified in arresting him and in seizing the automobile by means of which he was committing the offense—just as peace officers may lawfully arrest thugs and burglars, when their actions are such as to reasonably lead the officers to believe that they are actually engaged in a criminal act, without giving the criminals time and opportunity to escape while the officers go away to make application for a warrant.” (Italics ours.)

There was nothing in the case at bar to “reasonably lead” Manning and Pacetta to believe that Ganci was “actually engaged in a criminal act.” If the acts of the officers in entering and searching Ganci’s home can be legally justified, no man would be safe from the un-

read
Bochins

reasonable search which the Fourth Amendment denounces.

The Fourth and Fifth Amendments have been so recently considered by the Supreme Court that we need not pause to discuss the previous leading cases (*Gouled v. United States*, 255 U. S., 298; *Amos v. United States*, 255 U. S., 313).

The fact that Manning and Pacetta did not use force in entering Ganci's premises adds nothing to the government's case (*Gouled v. United States*, *supra*; *Amos v. United States*, *supra*).

It is urged, however, that because the narcotics were the instruments of the crime their seizure was lawful and the testimony was therefore admissible. It is not, however, unlawful merely to possess narcotics.

The illegal act (among others) consists in possessing *without registration and payment of tax*, and possession of narcotics is merely presumptive evidence of a violation of the statute. The case is quite different from *United States v. Welsh* (247 F. R., 239; 267 F. R., 819). If, however, upon the facts of this case there were any doubt that the seized narcotics were not admissible in evidence against Ganci it is disposed of by the *Amos* case (*supra*), where the Court held that it was error to receive in evidence the "illicitly distilled" whiskey because of the illegal search and seizure.

We must not be tempted to avoid the preservation of constitutional safeguards because of the nature of the crime charged nor because of difficulties in detecting crime. We realize the insidious and dangerous character of the narcotics concerned in this case and appreciate the skill necessary to discover the traffickers. The Supreme Court, however, has never permitted the obnoxious nature of a crime nor the difficulties of detection to dim its view as to the necessity of preserving at any cost

our hard-won constitutional safeguards, and it may be tritely observed that a stern adherence to that preservation makes both for liberty and order in the long run.

Finally, it is suggested that the motion to strike out came too late.

Whatever at one time may have been the view as to what constituted a seasonable application to require the government to return seized property or as to what should be regarded as a timely objection, there can now be no doubt that at any time prior to verdict a motion such as was here made must be entertained. In the *Gould* case the Supreme Court said: "It is plain that the trial Court acted upon the rule widely adopted, that courts in criminal trials will not pause to determine how the possession of evidence tendered has been obtained. While this is a rule of great practical importance, yet after all it is only a rule of procedure and therefore it is not to be applied as a hard and fast formula to every case regardless of its special circumstances. We think, rather, that it is a rule to be used to secure the ends of justice under the circumstances presented by each case and where, in the progress of a trial, it becomes probable that there has been an unconstitutional seizure of papers it is the duty of the trial Court to entertain an objection to their admission or a motion for their exclusion and to consider and decide the question as then presented, even where a motion to return the papers may have been denied before trial. A rule of practice must not be allowed for any technical reason to prevail over a constitutional right" (see also the *Amos* case).

In any event this Court will "in the exercise of a sound discretion sometimes notice error in the trial of a criminal case, although the question was not properly raised at the trial by objection and exception" (*Crawford v. United States*, 212 U. S., at p. 194), while, on the

other hand, the Court will disregard mere technical errors, "which do not affect the substantial rights of the parties" (Act of February 26, 1919, being chap. 48, amending sec. 269 of the Judicial Code).

As the search and seizure were illegal the motion to strike out the testimony relating thereto should have been granted, and failure so to do was reversible error.

Judgment reversed.

HOUGH, C. J. (dissenting).—This case raises acutely the question, What is an *unreasonable* search?

The recent *Lambert* decision (*supra*) sufficiently and directly shows that the question exists and is insistent. Its importance cannot be exaggerated, for Congress and Legislatures continually increase the output of statutes intimately regulating private conduct, and making crimes out of indulgence in sensual gratification, which in former yet recent days were left by municipal law to punish their own victims by the physical and moral damnation they admittedly produce. When some men are willing to pay sufficiently high prices for unlawful gratification of desire, other men will, of course, make a business of pandering to those vices, and such procurers are equally, of course, *professional* criminals—a class not engendered by the simple though severe criminal codes known when the constitution of this country was drafted.

When the mere possession of specified articles of commerce becomes *per se* criminal, the detection and suppression of crime becomes largely discovery and proof of possession; while the criminal invokes the law he professionally violates by using the citizen's castle, *i.e.*, his home, as the place of possession and the means of criminality. To harmonize the voice of a large class of twentieth century statutes with the voice of an eighteenth century constitution is indeed difficult.

Again, the *Lambert* case (*supra*) shows indirectly and by the absence of citation the novelty of the question.

The classic comment on the Fourth Amendment, viz., that it is a restatement of the common law maxim which "secures to the citizen immunity in his home against the prying eyes of the government," except in a "few specified cases" (Cooley Const. Limit, 7th ed., p. 425), does not get one very far until the "specified cases" are delimited with particularity. When it is remembered that Cooley, and all other nineteenth century commentators, identify this protection of home with protection "in person, property and papers," it is difficult to reconcile such *dicta* with the proposition (well supported by decisions) that one in custody on a criminal charge "may be subjected to personal search and examination even against his will for evidence of criminality, and such evidence may be constitutionally seized" (35 Cyc., 1271).

The gist of the decisions is that such search and seizure is reasonable, which means that courts having considered the facts decree as law on these facts—such reasonableness.

This is no more than has always been done by courts in passing on what is *e.g.*, a *reasonable* time or the like (*First National Bank v. Pipe, &c., Co.*, 273 Fed., 105).

If the same or a similar course is pursued here, it seems to me that a more reasonable search cannot be imagined.

The officers of the law saw Lusco deliver unlawful drugs to Smith; they learned from the latter that Lusco was going after a further supply; they saw him go into a tenement and emerge with the supply. It was an irresistible inference that there was a supply in that tenement, and a most natural and probable one that if there

was another Italian in said tenement he had the supply, *i.e.*, the very crime.

They entered the tenement, and the only Italian there was Ganci; they looked under the sofa and found the crime. The entrance was through a barber shop, a public place; there was no breaking, violence or deception.

To me this proceeding was perfectly reasonable; far more so than the spirit of apparent divination that guided the law officers to the recesses of Lambert's motor (*supra*).

"Reasonable" means no more than "agreeable to reason," and reason is but "that intellectual power by which we are enabled to combine means for the attainment of particular ends" (Bouvier Law Dict.).

When applied to searches and seizures it seems to me quite plain that "reasonable" should have the same signification as when used in other constitutional connections, of which it has been said that "the scope of the term as regards any situation must be measured, having regard to the fundamental principles of human liberty as they were understood at the time of the formation of the constitution" (*Bonnett v. Vallier*, 136 Wis., 193, 203).

If one considers these facts in this way it seems almost humorous to suppose that any eighteenth century bailiff would not have done what these officers did, or to suggest that any eighteenth century criminal would have thought his rights invaded.

Indeed, if officers literally in hot pursuit of a crime, *i.e.*, of unlawfully possessed drugs, some of which had been sold under their very noses a few minutes before, may not search and seize before (*e.g.*,) a douche of water destroys both crime and evidence, there is no such thing as a reasonable search except by warrant.

Perhaps so, but the amendment does not so declare and until by controlling authority this final manacle has been put on crime prevention I dissent.



Supreme Court of the United States

THOMAS ARTHUR FRANKLIN, and
ALMA ARTHUR FRANKLIN, and
JAMES PACE,

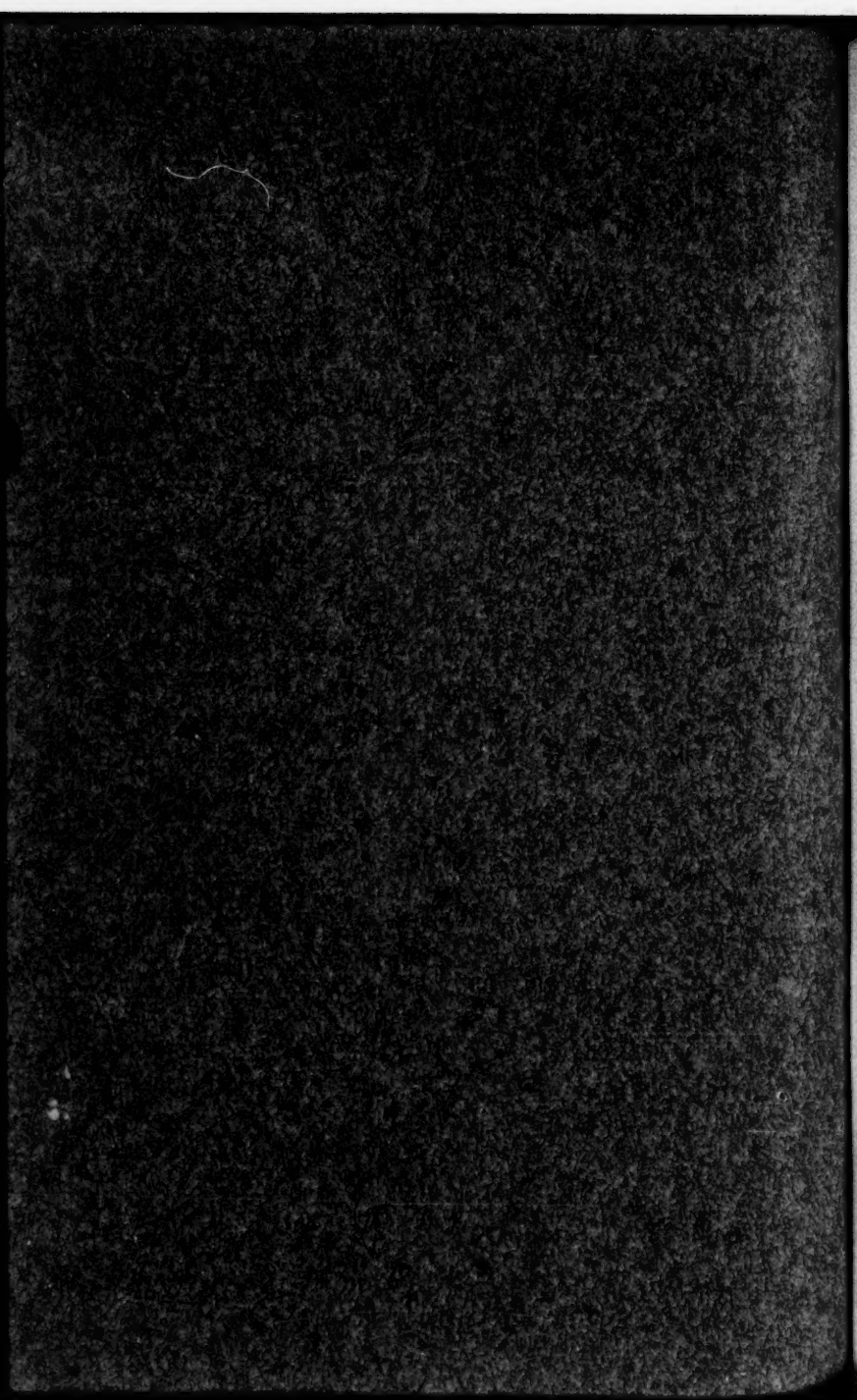
THE UNITED STATES OF AMERICA,

PLAINTIFFS,

vs.

JOHN EDGAR HOOVER,

Defendant.



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IN THE
Supreme Court of the United States

THOMAS AGNELLO, FRANK AGNELLO, STEPHEN
ALBA, ANTONIO CENTERINO and JAMES
PACE,

Plaintiffs-in-Error,

against

THE UNITED STATES OF AMERICA,
Defendant-in-Error.

BRIEF ON BEHALF OF PLAINTIFFS-IN-ERROR
(Defendants Below).

This cause comes here on writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit. The United States joined with the petitioners in requesting that the writ be issued, in order that the question of search and seizure be decided by this Court to the end that there may be uniformity of action on the part of Government officers in the enforcement of the so-called Anti-Narcotic Statute throughout the country.

The opinion of Judge ROGERS states the question involved in this case as follows:

"May an agent of the Government in a case where he can arrest without a warrant and search the person without a warrant, search also without a warrant the home of the person so arrested?" (fol. 792).

The opinion of Judge Hough states the question as follows:

"To say that a man may be searched after arrest, though not before; or that a place or house may be searched when a crime is there seen to be committed, and not otherwise, is to introduce false standards; the question always remains, was the search or seizure unreasonable?" (fol. 818).

And the conclusion is arrived at that the search was fully warranted

"not only of the place or house in which defendants met but of any other place reasonably indicated by surrounding circumstances as containing incriminating matter."

Not here

The defendants were convicted in the Eastern District of New York on the first count of an indictment which charged a conspiracy under Section 37 of the Criminal Code to violate the Act of December 17, 1914, commonly known as the Harrison Act. The indictment charged that the defendants conspired "to sell a large quantity of heroin, which is a derivative of opium, and cocaine, which is a derivative of cocoa leaves, without having first registered with the Collector of Internal Revenue" (fol. 7).

The important question presented herein arose in connection with the offer in evidence by the Government of a can of cocaine hydrochloride.

Two procurers, in the employ of the Government, went to 138 Union Street, Brooklyn, N. Y., on the night of January 16, 1922, to buy cocaine from the defendants Alba and Centerino. Revenue agents, on watch, followed Centerino, Pace, Thomas Agnello and Frank Agnello from a grocery store at 167 Columbia Street to 138 Union Street, the home of Alba. There the defendants were

apprehended in the very act of selling the cocaine to the procurers. The cocaine, which was the subject of the sale, was seized; the defendants were searched; other packages of cocaine were found on the person of Frank Agnello; and the defendants were then taken to the police station. Certain of the revenue agents then went to 172 Columbia Street, the home of Centerino, and searched the premises, but found nothing. They then went to 167 Columbia Street, there searched the grocery store, and then the bedroom of Frank Agnello, in the rear of the store. On a wardrobe in Frank Agnello's bedroom they found a can of cocaine hydrochloride. The revenue agents had no search warrant.

The can of cocaine hydrochloride was offered in evidence in *rebuttal*, to contradict the statement of Frank Agnello on *cross examination*, that he had never seen the can before it was exhibited to him in the court room.

The can was first offered in evidence on presentation of the case in direct of the Government, but objection was made on the ground that it was obtained through an unlawful search, and that there was no proof of the commission of any crime on the premises. The objection was sustained by the Court, on both grounds, and the can was excluded (fol. 130). On cross examination, Frank Agnello was asked whether he had seen the can at any time and he said that he had not (fols. 708, 711). Upon the evidence of Officer Manning that after the arrest, and after the prisoners were taken to the station house (fol. 719), he first searched No. 172 Columbia Street, the residence of Centerino, and then searched the store at No. 167 Columbia Street, conducted by Pace and Thomas Agnello, and then the bedroom in the rear of the store, occupied by Frank Agnello, where he found the can on top of a wardrobe, the can was received in evidence (fol. 737).

POINT I.

There was error in the admission, over proper objection, of evidence obtained by an unlawful search and seizure.

The can of cocaine hydrochloride was admitted in evidence, not to establish the fact that a crime had been committed, but to attack the credibility of the witness Frank Agnello. Agnello testified in his own behalf. On cross examination the following took place:

“Q. I show you this can, Mr. Agnello, and ask if you ever saw it before? A. No, sir.

Q. Did you ever see it in your store? A. No, sir, I did not.

Q. You are sure about that? A. Yes, sir.

Q. You sleep back of the store, don't you, at 167? A. I do” (fols. 708-709).

“Q. You have a wardrobe there, haven't you? A. Yes, two” (fol. 711).

The can was then marked for identification (fol. 711).

On rebuttal Officer Manning testified that after the defendants were arrested “and the prisoners were taken to the station house by other agents” he went first to 172 Columbia Street, the home of Centerino, made a search of the premises there, and then searched the store and living rooms at No. 167 Columbia Street (fols. 719-722). He found the can, Exhibit 12 for Identification, “in the living rooms, on Columbia Street—on top of a wardrobe in the bedroom” (fol. 724). Upon proof that the can contained cocaine hydrochloride it was received in evidence (fol. 736).

Manning was assisted in his search by Oyler, Pacetta and Moog. *As shown by the detailed statement of facts (Point III) no one of these officers who made the search of the home of Centerino, and of the store and living rooms at No. 167 Columbia Street, had any knowledge or*

information whatsoever that there was in either of these places a supply of cocaine. Although it was known to *Napotitano* that when Centerino left No. 138 Union Street, "he went out and got the stuff" (fol. 134), and although it was known to *Dispenza* that Centerino said that he would go down to his partner's house and get the stuff (fol. 344), these facts were not known to the agents who made the search. These agents may have inferred that Centerino went out for the purpose of obtaining cocaine, but that is not the evidence of sight, hearing, or smell upon which so much stress is laid in the opinion of the Court below. That was a mere supposition. The fact that certain packages were found on the person of Frank Agnello did not justify a reasonable belief that a further supply of cocaine would be found in his residence. Is it a correct inference that the possession by a person of packages of cocaine or a flask of whiskey furnishes probable cause for the belief that he has in his residence a supply of cocaine or whiskey? Does such belief on the part of a Revenue Agent authorize the search of a residence without a warrant? Would the disclosure of these facts constitute "probable cause" so as to justify the issuance of a warrant, within the requirement of the Fourth Amendment?

Upon the very basis adopted by the opinions of the Judges below, the search in this case was unauthorized. The agents did not have "such direct and personal knowledge as justified the search of the premises of Agnello" (fol. 814). The matters "seen and heard by the officers" were not "most persuasive of crime committed," and search of the bedroom of Frank Agnello was not justified as a "place reasonably indicated by surrounding circumstances as containing incriminating matter" (fol. 819). But the question whether in the particular case, and under the facts and circumstances here presented, the search was justified within the principle laid down by the Court below is unimportant in view of our contention that the

basis of determination adopted in this case was new, novel, unsupported by authority, destructive of the requirements of the Constitution, and most pernicious in its consequences to all citizens in the enjoyment of fundamental rights.

The fallacies which have led to the opinions rendered in this case are fundamental. They have no support in precedent, in the historical events that give reason, force, and direction to the provisions of the Constitution, or in the opinions of this Court in cases where the question has come up for consideration. They do violence to established rules and principles of law, whose efficacy has been proved and confirmed by the orderly development of our law through their consistent application. No Court can strike out on new avenues of approach to these fundamental questions without risk to all the rights and privileges of the citizen embodied in the Constitution. Novelty in the rules applicable to the interpretation or application of constitutional provisions has nothing to commend it. Novelty is the way of slight deviations and stealthy encroachments, which lead to gradual depreciation of the rights guaranteed by the Constitution.

"It will be observed that the Constitution secures the people against 'unreasonable search and seizure' and from the use of the word 'unreasonable,' it might be thought that a reasonable search and seizure, or one that was not unreasonable, would be allowed without a search warrant. But there is no foundation for this construction. The section does not permit any kind or character of search of houses, papers, or possessions, without a search warrant."

Youmans v. Commonwealth, 189 Ky., p. 159.

The Court below attempted to define the term "unreasonable searches and seizures". In doing so, it first

adopted the principle that the prohibition of unreasonable searches necessarily implied a right to make reasonable searches. In order therefore to determine what was unreasonable, it applied itself to the inquiry of what was a reasonable search. It found that the search of a person at the time of his arrest was accepted by all Courts as authorized and permissible. This right of search as related to the right to arrest was thereupon accepted by the Court as the norm and standard by which to measure the reasonableness of search in other cases. In order however to insure that the search should be incidental to the arrest, and that the mere right to arrest should not be availed of to make a search for evidence, the Court below limited the right to search to the case of an *actual* arrest. And further, in order to insure that the officer making the arrest should have probable cause for the search, it was apparently required that the crime should have been committed in the presence of the officer who made the arrest and who was thereby authorized to make the search.

Judge Hough refused to accept this standard, whereby the right of search was dependent on and coextensive with the right to arrest for a crime committed in the presence of the officer. In his opinion no principles whatsoever surround the enforcement of the safeguards of the Fourth Amendment. No limitations derived from the historical origin of the Amendment can restrict its application. He declares reasonableness to be at all times and everywhere a mere question of fact. To require that the arrest must be made *before* the search, to confine the place of search to the place where the crime is committed, to compel the searching officer to be a witness to the crime, "is to introduce false standards" (fol. 818).

We are in accord with Judge Hough, that the prevailing opinion does introduce false standards. The opinion

of Judge ROGERS does no more than set up certain arbitrary and artificial standards for determining a question of fact. If the officer actually makes an arrest for a crime committed in his presence, he becomes thereby qualified to act as a searching officer. *The officer may then determine whether he has probable cause to make a search, and may act on his determination.* An officer who has not fulfilled these preliminary requirements is compelled under the Constitution to make oath or affirmation, to describe the place and person to be searched, to satisfy a *judicial officer* that there is probable cause for the issuance of a warrant. All this must be done *before the search*. But if the officer has made an arrest for a crime committed in his presence, he authorizes his own search. If he determines that he has probable cause, no one may properly resist the search. For it is only *after* the search, when the officer has been permitted to testify upon the trial, or to make affidavit upon a motion to compel return, that any Court can determine whether in the mind of the officer there was that knowledge or evidence obtained from sight, hearing, or smell, that furnished probable cause.

X The Constitution attempted to set up a safeguard that would prevent the invasion of the home, and for that reason required that probable cause for the issuance of a warrant be shown upon oath to a *judicial officer*. The law established by the opinion below authorizes a search in the first instance, and leaves the question of probable cause to be judicially determined only after the search has been made. Such a procedure may give effect to the Fifth Amendment, for if the Court determines that the officer did not have probable cause, the evidence obtained by the search will not be received. But the Fourth Amendment has become a dead letter. X And since the question can only arise where something in the nature of evidence has been procured, and since no human judge can determine the question of fact with a mind uninflu-

enced by the successful result of the search, the rights guaranteed by the Fifth Amendment are also in course of being frittered away by "stealthy encroachments."

The Fourth Amendment is instinct with the requirement that the necessity and the propriety of a search warrant shall be determined by a judicial officer before the arrest. These very requirements were the deliberate obstacle to an unreasonable search. Any interpretation of this amendment that does full violence to these requirements is necessarily false to the spirit and intention of the constitutional safeguard. It dispenses totally with the safeguards of the amendment, it authorizes a procedure that is the exact opposite of the constitutional provision, and it is a seven-league step in the direction of arbitrary abuse of power by Government employees, which it was the very purpose of the amendment to forestall.

The right of a man to be secure in his home, to oppose and repel unauthorized invasion of the sanctity of his home by employees of the Government, stands by itself as an indefeasible, unimpaired right. Because the Fifth Amendment secures the citizen against compulsory self-incrimination, it has been held that a search for evidence, is under any and all circumstances and without exception, an unreasonable search under the Fourth Amendment.

But without regard to the result of the search, and without regard to the power of the Court to protect the citizen against self-incrimination, the right of the sanctity of the home guaranteed by the Fourth Amendment, is an independent self-subsisting right.

The citizen has a right to be secure against an unauthorized search. He may stand at his door and resist an officer who is not provided with a warrant for the search. He is not required supinely to submit to the invasion of his home, and to wait until the validity of the search is determined in an action for trespass, or in a criminal trial in which he is the defendant and the fruits

of the search are offered in evidence against him. The citizen may stand on the Fourth Amendment. The Fifth Amendment operates only when evidence has been found as a result of the search. The Fourth Amendment furnishes security against the search itself without regard to the result of the search. The protection furnished by the Fifth Amendment comes too late. The constitutional right of the citizen secured by the Fourth Amendment has been irrevocably violated.

the innocent to the right to arrest the guilty
The essential purpose of the amendments is to safeguard the innocent. It is recognized that behind this shield many guilty would find refuge. But no principle of interpretation should be adopted that will subordinate the rights of the many innocent to the necessity of apprehending the few guilty.

The effort of the Court below to correlate the right to search to the right to arrest, and to assimilate the principles applicable to the one to the other are based upon an obvious fallacy. The rights of the citizen under the Fourth Amendment were intended essentially to protect the innocent against unlawful invasion of their homes. The authority of a peace officer to arrest was without any limit at common law. The necessity of apprehending the guilty dominated and controlled any consideration for the rights of the innocent. No person, informed by a constable of the charge against him, could rightfully resist arrest for a felony. To accomplish the arrest, the sheriff or constable could call for the aid of any bystander. The necessity of the case compelled the citizen to yield, and to submit to future determination the question whether the arresting officer had probable cause for the arrest.

The exception does not make the rule. The right to search the person in the specific case of his arrest does not furnish the standard by which to determine the reasonableness of a search of his residence. Immunity is the rule; the right to search the person is an exception.

(*Peo. v. Chiagles*, 237 N. Y., 193.) It is one of a class which "are necessarily excepted out of the category of reasonable searches and seizures." (*Boyd v. U. S.*, 116 U. S., p. 624.)

In the case of *Entick v. Carrington*, 19 Howell's State Trials, 1029, fully considered by this Court in the *Boyd* case, there was also urged that the right to search and seize "bears a resemblance * * * to the known case of search and seizure for stolen goods." Lord Camden resolutely refused to assimilate the right to search for evidence to any proceeding then known.

"No man can set his foot upon my ground without my license, * * *. If he admits the fact, he is bound to show, by way of justification, that some positive law has justified or excused him. The justification is submitted to the judges, who are to look into the books, and see if such a justification can be maintained by the text of the statute law, or by the principles of the common law. If no such excuse can be found or produced, the silence of the books is an authority, against the defendant, and the plaintiff must have judgment."

At common law a peace officer is justified in making an arrest without a warrant, though no felony has been actually committed, if he has reasonable ground to suspect that one has been committed, and he acts in good faith and without evil design. (*Burns v. Erben*, 40 N. Y., 463.) It is not required that the crime shall have been committed in his presence. The Code of Criminal Procedure of the State of New York changed the common law by providing that a peace officer may without a warrant arrest a person only when a felony has in fact been committed (Section 177, Code of Criminal Procedure). The statement in the opinion of Judge ROGERS that that provision was in accord with the rule at common law is incorrect. The case referred to, in support of that statement, *People ex rel. Kingsley*, 22 Hun, 300,

was the case of a misdemeanor, committed out of the presence of the officer making the arrest.

+ // *The right to search the home is in no aspect a correlative of the right to arrest.* No provision of the Constitution protects the citizen against arrest, except the general provision that he shall not be deprived of his liberty without due process of law. The exigencies that require immediate action where crime has been committed, or, in the case of a felony, where there is no more than a reasonable ground to believe that a crime has been committed, necessarily subject the individual to the risk of mistakes. The law relating to arrest is born of the necessities of the case. Any citizen may arrest; only officers of government may search. Mere arrest does not expose a citizen to the risk of penalties, imprisonment or forfeiture. The rights of a person arrested to a speedy trial, to be informed of the charge, to bail, to counsel, and to a writ of habeas corpus, were all designed to rectify a wrongful arrest or detention. But with these safeguards, the rules applicable to arrest were intended rather to further the prompt and thorough administration of justice than to insure the citizen against possible abuse. In the case of arrest, it has been the experience of government that it is better that an innocent person should be subjected to temporary embarrassment than that too easy a means of escape should be provided for the guilty.

It may be reasonable and desirable to adopt for seizures and searches a rule as broad as that relating to arrests, but the Constitution proceeds upon a different theory. The Fourth and Fifth Amendments did not provide remedial measures for the detection and punishment of crime, but were designed to protect the citizen against the abuse of power by executive officials, and to prevent the recurrence of evils familiar to the founders. The Constitution provides, without any exception, that a search can be made only upon a search warrant, issued upon probable cause, supported by oath or affirmation,

and particularly describing the place or person to be searched. It was framed and designed to insure the fullest protection to the innocent. It recognized that undetected crime was no greater evil than the abuse of power by the executive. The principles relating to the right to arrest, and those relating to the right to search, have nothing in common.

It is significant that in support of the principles adopted by the Court below not a single case in the Supreme Court of the United States is appealed to for authority. It was impossible to refer to any opinion of this Court in support of the view that "an agent of the Government in a case where he can arrest without a warrant and search the person without a warrant" may search also "without a warrant the home of the person so arrested."

This Court has had before it for its careful consideration the question here presented, on several recent occasions. It has not attempted to set up artificial standards of reasonableness, nor to adopt a construction of the Amendment that would impair its efficiency in the protection of the rights of citizens of all classes. It has not yielded to a desire to see the guilty punished at the expense of the probable abuse of arbitrary power by executive officials. It has encountered no difficulty in adopting a test that is easily applicable by the courts to the facts of any particular case. It has aimed to vitalize the purposes of the Constitution, rather than fritter away its efficiency by a strained interpretation. It has adhered strictly to three firmly established principles—
 + *first*, it has given full effect to the words of the Amendment; *second*, it has permitted exceptions only where such exceptions were of a class known to the founders, and established as part of the common law when the Constitution was adopted; *third*, it has not permitted the exceptions to outgrow the law, or to determine the direction of its application.
 +

This Court has without deviation applied the principle that a search of person or of residence, or a seizure of property or effects may not be had for the mere purpose of obtaining evidence. In contrast with this simple rule, we have here suggested for the first time a standard and a test that is derived, not from the words of the Amendment, but from an exception to the rule. The reasonableness of the arrest, and the justification of the right to arrest, are made the standards for determining the reasonableness of the search, or of the right to make the search. And the exception to the rule that permits a person at the time of arrest to be searched for the instruments of his offense, or to deprive him of the means of resistance or escape, grows not only to overshadow, but to supplant the rule to which it is an exception. With the result that the belief of a revenue agent is made to satisfy the provision of the Constitution that secures home and person against search until a Magistrate entrusted with judicial functions is satisfied by oath that there exists probable cause for the search.

The opinion of Judge HOUGH is based upon the general proposition that the question of reasonableness is a question of fact, and that every search is authorized which is not prohibited.

Against this we have the opinion of this Court:

“Can we doubt that when the Fourth and Fifth Amendments to the Constitution of the United States were penned and adopted, the language of Lord Camden was relied on as expressing the true doctrine on the subject of searches and seizures, and as furnishing the true criteria of the reasonable and ‘unreasonable’ character of such seizures?”

Boyd case, supra, page 630.

But the gist of the decision by Lord Camden is not that search may not be made for books and papers; that was only the application of the principle of his opinion. The principle of his opinion was that no man may trespass on the property of another unless he is able to show "by way of justification, *that some positive law has justified or excused him.*" All invasions of the sanctity of a man's home are unreasonable unless they are justified. It is not incumbent upon the citizen to justify his resistance. It is incumbent upon the officer to justify his entry.

And even if the right or reasonableness of the search is matter of fact, the Constitution has prescribed how this matter of fact shall be determined. Without exception, it compels proof upon oath, to the satisfaction of a judicial officer, that there is probable cause, and that the search will not extend beyond limits definitely stated in the warrant. In the opinion of the Court below, and under the rules adopted by the opinions of both Judge ROGERS and Judge HOUGH, probable cause is a fact to be determined by the officer. The citizen resists at his peril. For if it is determined within the rules laid down by the Court below, either that the officer has made an arrest of a person in the actual commission of a crime, or in the opinion of Judge HOUGH under any circumstances where he has evidence of crime being committed, his search is upheld. It is a reasonable lawful search. So that this question of fact is determined by a judicial officer, *after the search*, upon the evidence of a governmental employee, who testifies to the knowledge that gave him probable cause, and who is under the compulsion of self-interest to justify his search.

The provisions of the Fourth Amendment are clear and intelligible. It is not alone in the interest of the citizen, but in the interest of the executive, that the conditions under which a search warrant should issue shall be precisely defined. Efficiency in the administration

of the criminal law is properly subordinated to some extent to certainty.

In the opinion of Judge ROGERS, the arrest of a person who has committed a crime in the presence of the officer is a prerequisite to the right of a search without a warrant. How far from the place of arrest may the search be conducted? How long after the time of arrest?

In the opinion of Judge HOUGH, arrest is no prerequisite. Arrest is merely in itself an indication that the officer has that knowledge which would justify a search. Given the knowledge, the officer may search without making an arrest.

Judge ROGERS contends that the right to be secure against a search is less sacred in its importance than the right to be secure against arrest. Unlawful *detention* of the person is prevented by several constitutional provisions. The person arrested has a right to be informed of the charge, to have the advice of counsel, to bail, and finally to a writ of habeas corpus to inquire into the cause of his detention. Unlawful and unauthorized arrest can be speedily remedied. But what relief is there against an unauthorized search? The search has been made and completed. It is no answer to the citizen whose rights have been outraged that he can protect himself by proper objection upon a trial to the use of evidence obtained through the unlawful search. The Fourth Amendment protects the home against invasion, without any regard to the success or non-success of the search.

The Constitution does not contain any provision which prescribes limitations upon the right to arrest, except the general provision that a person shall not be deprived of his liberty without due process of law. The Constitution made no change in the common law governing the right to arrest. And the common law, which

gives to a constable the right to arrest without warrant, in any case *where he has reasonable ground to suspect that a felony has been committed*, was based upon the principle of efficient and prompt administration of justice. It was a rule of efficient execution, leaving an abuse of power to be redressed by civil action. The Fourth Amendment provides a safeguard of protection and to effectuate this, imposes requirements that must be complied with as a prerequisite to the right of search.

POINT II.

The decision of the Circuit Court of Appeals is contrary to the decisions of this Court.

Illegitimate and unconstitutional practices get their first footing by silent approaches and slight deviations from legal modes of procedure. The supreme law of the land is not upheld by a too ready acquiescence in such methods. On the contrary this Court has established the rule that error, if error there must be, should extend, rather than narrowly confine, the limits of the protection of the Constitution. This can only be obviated by adhering to the rule that constitutional provisions for the protection of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right as if it consisted more in sound than in substance.

"It is the duty of Courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon."

Boyd v. United States, 116 U. S., 616, at page 635.

"The warrant is not allowed for the purpose of obtaining evidence of an intended crime, but only after lawful evidence of an offense actually committed. Nor even then is it allowable to invade one's privacy for the sole purpose of obtaining evidence against him, except in a few special cases where that which is the subject of the crime is supposed to be concealed, and the public or the complainant has an interest in it or in its destruction. Those special cases are familiar and well understood in the law. Search warrants have heretofore been allowed to search for stolen goods, for goods supposed to have been smuggled into the country in violation of the revenue laws, for implements of gaming or counterfeiting, for lottery tickets or prohibited liquors kept for sale contrary to law, for obscene books and papers kept for sale or circulation, and for powder or other explosive and dangerous material so kept as to endanger the public safety. A statute which should permit the breaking and entering a man's house, and the examination of books and papers with a view to discover the evidence of crime, might possibly not be void on constitutional grounds in some other cases, but the power of the legislature to authorize a resort to this process is one which can properly be exercised only in extreme cases, and it is better oftentimes that crime should go unpunished than that the citizen should be liable to have his premises invaded, his desks broken open, his private books, letters, and papers exposed to prying curiosity, and to the misconstructions of ignorant and suspicious persons; and all this under the direction of a mere ministerial officer, who brings with him such assistants as he pleases, and who will select them more often with reference to physical strength and courage than to their sensitive regard to the rights and feelings of others. To incline against the enactment of such laws is to incline to the side of safety. In principle they are objectionable; in the mode of execution they are necessarily odious; and they tend to invite abuse and to cover the commission of crime. We think it would gen-

erally be safe for the legislature to regard all those searches and seizures 'unreasonable' which have hitherto been unknown to the law, and on that account to abstain from authorizing them, leaving the parties and the public to the accustomed remedies."

Cooley's Constitutional Limitations, page 374.

"They are not to be granted without oath made before the justice of a felony committed, and that the party complaining hath probable cause to suspect they are in such house or place and do show his reasons for such suspicion. For these warrants are judicial acts and must be granted upon examination of the fact."

Hale, 2 P. C., p. 150.

The opinions rendered below make no appeal to the decisions of this Court for support of the standards of reasonableness adopted in this case.

The decision of this Court in *Silverthorne Lumber Co. v. United States*, 251 U. S., 385, is made to rest upon the proposition that "as no crime had been committed in the presence of the officers they had no right to make a search without a warrant." But no such view was advanced or approved by this Court in that case. In fact that argument was not made on behalf of the Silverthornes. It does not seem to have occurred, either to the Court, or to counsel, that the fact of arrest was of any importance in determining the validity of the search. We may apply the conclusion of Lord CAMDEN in the *Entick* case, *supra*:

"If no such excuse can be found or produced, the silence of the books is an authority, against the defendant, and the plaintiff must have judgment."

In the case of *Weeks v. United States*, 232 U. S., 383, Weeks had been placed under arrest by police officers. The very day of the arrest the United States Marshal

entered the house of Weeks, made search, and took away certain letters and papers. Prior to the time that the Marshal went to the house, there had been placed in his possession various papers and articles which had been seized by the policeman. How would this case have been determined under the principles laid down in the opinions of the Court below? Did this Court deem it of any importance that the Marshal had reasonable cause to believe that a felony had been committed? Will this Court accept a principle or adopt a principle that would permit a Post Office Inspector who receives a circular through the mail, to act upon his belief that there has been a use of the mails in execution of a fraudulent scheme, arrest the offender, and immediately thereafter search his home and seize the circulars, books and papers relating to the alleged fraud?

In the *Silverthorne* case, *supra*, the two Silverthornes, father and son, had been arrested after indictment. While they were under arrest and detained in custody, the United States Marshal went to the office of the Company and seized their books and papers. Here was an arrest justified by the indictment and the probable issuance of a bench warrant. What effect did this Court give to the search in view of the valid arrest? None whatever.

In the case of *Amos v. United States*, 255 U. S., 313, the Court did not inquire what probable cause the Revenue Agents had to believe that Amos was engaged in the commission of a crime. Such an inquiry manifestly would have involved testimony by officers entirely outside the issues.

In no case in this Court have we been able to find any suggestion that the search is ordinarily an incident of the arrest, and that the right to search is at least co-extensive with the right of arrest.

POINT III.

Even upon the principle adopted by the Court below, the search by the officers was not justified, since they did not have such probable cause as would have justified the issuance of a search warrant.

"And the law, in requiring a showing of reasonable cause for suspicion, intends that evidence shall be given of such facts as shall satisfy the magistrate that the suspicion is well founded; for the suspicion itself is no ground for the warrant except as the facts justify it" (Cooley's Constitutional Limitations, p. 367).

1.

The possession of opium is not an offense under the Harrison Act.

2.

A warrant to search the premises for cocaine or other narcotic cannot be granted merely upon proof that cocaine or opium will be found upon the premises, but upon proof that a crime against the Statute of the United States is being committed upon the premises by the sale of narcotics.

Narcotics are not forfeitable to the United States. Search warrants, it is said in *Gouled v. U. S.*, 255 U. S. at page 309,

"may not be used as a means of gaining access to a man's house or office and papers solely for the purpose of making search to secure evidence to be used against him in a criminal or penal proceeding, but that they may be resorted to only when a primary right to such search and seizure may be found in the interest which the public or the complainant may have in the property to be seized, or in the right to the possession of it, or when a *valid*

exercise of the police power renders possession of the property by the accused unlawful and provides that it may be taken." (Italics ours.)

The Revenue Agents had no information that justified the issuance of a search warrant upon the ground that a crime was being committed at No. 167 Columbia Street.

3.

Assuming that the information possessed by the Revenue Agents was sufficient to enable them to state on oath that there was probable cause to believe that cocaine would be found in the bedroom of Frank Agnello at No. 167 Columbia Street, then a search warrant issued after the arrest would have been a warrant to search for evidence. Such search warrants have been condemned by this Court uniformly and without qualification.

4.

No search is reasonable if the officer who makes the search would have been unable to make oath or affirmation to facts that would establish probable cause, and would designate the place or person to be searched (*Ganci v. United States*, 287 Fed. at p. 65). Without making oath, without describing the place to be searched, or the person against whom the search is to be made, may an officer proceed as fully as if he were protected by a warrant? What becomes then of "probable cause"? Does the officer determine this for himself? Does his "reasonable belief" supplant the constitutional requirement of "probable cause"? Does he exercise in this respect the judicial requirement imposed by the Constitution on the Courts of the United States? Assume that the officer may do all this, what facts were within his knowledge that would enable him to make oath that there was a can of cocaine hydrochloride on top of the wardrobe in the bedroom occupied by Frank Agnello?

If it be assumed that, following the arrest, the officers were justified in making a search for evidence, there was no probable cause to believe that evidence would be found in the bedroom of Frank Agnello at No. 167 Columbia Street. "Probable cause" as used in the Fourth Amendment does not mean mere inference or supposition. The oath or affirmation required must be as to facts. The purpose of an oath is to subject the affiant to prosecution for perjury if he bears false witness. The Court or Magistrate acts judicially. It is obvious therefore that the ground of belief and the basis of probable cause must consist of facts, and not mere suppositions.

Inasmuch as the opinions of both Judge ROGERS and of Judge HOUGH rest in part upon the proposition that the Revenue Agents who made the arrest actually had information which furnished reasonable ground for the belief that cocaine would be found in some part of the premises searched, it becomes important to inquire what information the *searching officers* actually had. These officers were on watch and some of them followed the movements of the various defendants. It does not appear by the record that any of the information obtained by Napolitano or Dispenza had been communicated to the officers who made the search. At the time of the arrest the stool pigeons were treated by the officers in the same manner as the defendants, for the obvious reason that it was not desired to expose the complicity of the procurers. The Court is therefore confined to the facts shown by the record to have been known to the particular agents who made the search. These agents were Manning, Oyler, Moog and Pacetta (fol. 126). The testimony of what these officers saw and did on the night of January 16th is as follows:

MANNING.

Manning testified that he, Nunzio and Napolitano, the procurers, entered No. 138 Union Street; about an hour later they came out with Alba and Centerino; they then returned into the house with Alba, while Centerino went toward Columbia Street and entered No. 172 Columbia Street (fol. 112). Manning and Oyler followed Centerino. Centerino left No. 172 Columbia Street and crossed to No. 167 Columbia Street, a grocery store (fol. 113). In about ten minutes he came out with Pace and the two Agnellos (fol. 113). These four, still followed by Manning and Oyler, went to No. 138 Union Street. Manning looked in through the window and there "saw Alba go over to the table and lay two packages down on the table" (fol. 115). The officers then broke into the room, placed the defendants, together with Napolitano and Dispenza, "up against the wall and searched each and every one of them" (fol. 120). The marked money was found on Alba and a number of packages were found on the person of Frank Agnello (fol. 121). Thomas Agnello was taken into the next room and asked "where he got the stuff from" (fol. 124). He stated that "it was coming from the sailors off the ships" (fol. 126). Manning then went with Oyler, Moog and Pacetta to No. 172 Columbia Street, to the top floor, where he spoke to Centerino's wife (fol. 127). He then went to No. 167 Columbia Street to "the store and the back rooms and in the yard."

It was at this stage of Manning's testimony that the offer was made to prove what was found during the search of No. 167 Columbia Street, and the testimony was excluded, on two grounds, first, that the search was without a search warrant, and second, that there was no proof of the commission of any crime on the premises (fol. 130).

OYLER.

Oyler saw Alba and Centerino at No. 138 Union Street on the evening of January 16, 1922. He saw Napolitano and Nunzio enter, and later come out with Alba and Centerino. Centerino went down to Columbia Street, and the other three entered 138 Union Street. Oyler followed Centerino (fol. 190). He states that Centerino went direct to No. 167 Columbia Street. In about ten or fifteen minutes Centerino came out with Pace, Thomas Agnello and Frank Agnello (fol. 191). He followed these four men back to 138 Union Street. He did not see anything that took place in the room, until after he and the other officers broke in and lined up the defendants. When he entered the room he found three blue packages lying on the table (fol. 193). Other packages were found on Frank Agnello (fol. 195). Agnello was asked where he got the packages and he said "Some man gave them to him and gave him \$5.00 to bring them up" (fol. 195). The money was found on Alba. Thomas Agnello asked to talk with Oyler and Manning and Oyler took him into the next room (fol. 196). Oyler does not testify that Thomas Agnello was questioned concerning the narcotics. Centerino was then questioned and he stated that "he knew nothing about the packages at all" (fol. 200). Pace was next interrogated. He was asked where his place of business was and he said "No. 167 Columbia Street". Oyler then said "That is the same house they brought the narcotics out of? What do you import—narcotics"? Pace made no answer (fols. 201-202). Later Thomas Agnello and Pace spoke to Oyler, and in the course of this conversation, Thomas Agnello said that he and Pace were partners and that they lived at 167 Columbia Street. Oyler testified that he informed them that they were going to search that house and that they said "all right" (fol. 204). Oyler asked Alba where the packages came from and he did not know (fol.

205). The defendants were placed under arrest and taken to the station house. Oyler did not accompany them (fol. 212).

MOOG.

Moog testified that on the evening of January 16, 1922, he saw Dispenza and Napolitano enter 138 Union Street. He then saw Alba come out and go to No. 172 Columbia Street. Moog and Oyler followed Alba. In about five minutes Alba came out of 172 Columbia Street with Centerino (fol. 287). These two then went to No. 167 Columbia Street. Centerino entered, and in about a minute returned and joined Alba. They then went to No. 138 Union Street. Centerino came out and again went to 167 Columbia Street. In about ten minutes he came out with Pace and the two Agnello brothers (fol. 287). Moog did not see anything that took place in the room at No. 138 Union Street, except that he saw two blue packages on the table after the Revenue Officers had broken in. Moog did not hear anything that was said by any of the defendants.

PACETTA.

Pacetta did not testify at the trial. He was out of the country at the time of the trial.

On rebuttal Manning testified that "after these arrests were made and the prisoners were taken to the station house by other agents" (fol. 719), he made a search of the home of Centerino at No. 172 Columbia Street. He found nothing (fol. 720). Then he went to No. 167 Columbia Street, an Italian grocery store with two rooms at the back. He made a search of the two rooms at the back, and "on top of a wardrobe in the bedroom he found a can" (fol. 724).

(Manning states that Officer McCormick was present at the time of this search, but it appears

by McCormick's testimony that he had taken Pacetta to the hospital to have his hand treated, and apparently was not present at the time of the search [fol. 279]).

We have stated in detail the facts known to the officers who made the search, so that it may be readily determined what information they had that justified their belief that a felony was being committed at No. 167 Columbia Street. The search cannot be justified by the results of the search, nor can it be justified by what the officers who made the search may later have learned from the stool pigeons, Dispenza and Napolitana. There is absolutely no evidence in the record that Napolitano and Dispenza communicated to any of the officers what they had learned.

Napolitano testified directly that neither Thomas Agnello nor Frank Agnello nor Pace took any part in the conversation at the time of the sale (fols. 45-46).

There was in fact an entire absence of evidence that in any manner implicated Pace, Thomas Agnello or Frank Agnello, except the mere fact of their presence at the time and place of the arrest. This total failure of evidence it was attempted to supply by the testimony of the stool pigeon, Dispenza. Dispenza was the last witness called by the Government. He testified that

"Centerino told the defendant Pace and the Agnellos that we were the ones that wanted to buy the coke" (fol. 346).

"Then the defendant Pace asked us if we were ready for business; if we had the money, so I told him 'yes.' So he started to take the packages—one of the Agnellos started to take the packages and put them on the table—the young Agnello took the packages out of the pocket and handed them over to the big Agnello brother, and he put them on the table Alba asked for the money" (fol. 348).

He did not discuss his testimony with Oyler or any of the other agents (fol. 396).

It appears therefore that the agents who made the search had in fact no information that justified them **in believing that they would find cocaine**, either at the residence of Centerino, at the store conducted by Pace and Thomas Agnello, or in the bedroom occupied by Frank Agnello. They questioned the defendants in order to ascertain where the cocaine came from. They received no information. If it is true that evidence furnished by sight, or hearing, or smell, is sufficient to justify breaking into a home in order to make an arrest, then that kind of evidence was entirely lacking in this case. It is not true that, as stated in the opinion of Judge ROGERS, "the agents had such direct and personal knowledge as justified the search of the premises of Agnello—as fully as it did the search of his person." The officers acted upon mere supposition. The inference that they made was not an inevitable inference from the facts known to them. In addition to the packages found on the table, they found certain packages on the person of Frank Agnello. They assumed that a search of Frank Agnello's home might reveal a further supply. But this inference was not so irresistible as the opinion of the Court would indicate. *For the agents did not go to Frank Agnello's home first; they went first to the home of Centerino at No. 172 Columbia Street.*

It cannot be necessary to point out that any revenue agent who finds a person in possession of a hip flask containing whiskey would be equally justified in his inference that the flask had been filled out of a bottle which would be found at that person's residence. If that inference proved unfounded, then of course there would be a still stronger inference that a search of his office would disclose the source of supply.

POINT IV.

The indictment does not state facts sufficient to constitute a crime.

A motion in arrest of judgment was made on the ground that the indictment does not state facts sufficient to constitute a crime (fol. 768). While the defect herein discussed was not specifically brought to the attention of the Court, it is a matter of substance and is properly presented by a general motion. The indictment charges a conspiracy to sell heroin and cocaine. It does not charge a conspiracy to sell *within the United States*. The sale of cocaine without the United States is not made an offense. In order to charge a substantive offense the indictment must charge an actual sale within the United States. In order to charge a conspiracy to commit this offense, the conspiracy must be to sell within the United States.

It is respectfully submitted that the judgment of the Court below should be reversed.

Dated, New York, November 21, 1924.

Respectfully submitted,

BATTLE, VANDIVER, LEVY & VAN TINE,
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of Counsel.

Office Supreme Court

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In the Supreme Court of the United States

OCTOBER TERM, 1924.

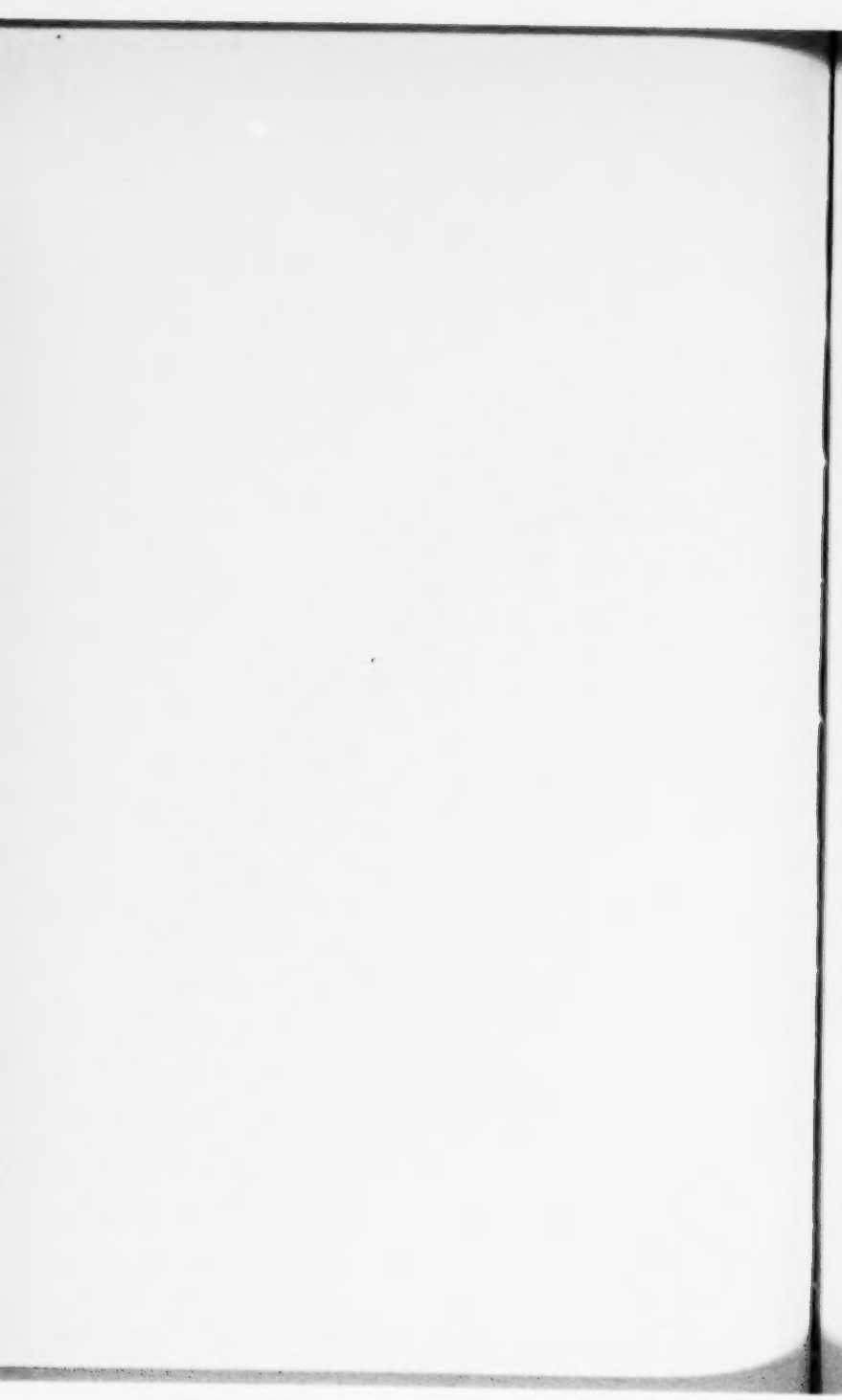
THOMAS AGNELLO, *et al.*, *Petitioners*,

v.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR REHEARING.



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I.

The opinion of the Circuit Court of Appeals states:

“Following this, several of the officers went to No. 167 Columbia Street, Brooklyn, which was occupied as a grocery store and also as a residence by the Agnellos” (p. 522).

II.

The Assistant District Attorney stated in his summation that the can was found in the home of the Agnello boys. This statement was stricken out by the Court (p. 504), but must be taken as an indication that the prosecution believed it has established this fact against both of the Agnellos.

III.

The testimony with reference to the connection of petitioners with the store and residence at 167 Columbia Street is as follows:

Manning, Inspector in the Narcotic Squad, testified that he followed Centorino to 167 Columbia Street just before the sale, and that Centorino first went to 172 Columbia Street, that “He came down and crossed the street and went down to No. 167 Columbia Street, which seemed to be like a grocery store” (p. 73). After about ten minutes Sentorino came out with Pace “and the two Agnello boys” (p. 74).

Manning further testified that after the sale had been made, and after the arrest, he went to 167 Columbia Street. He was then questioned as follows:

"Q. What part of the premises did you go to there?

"A. The store and the back rooms and in the yard.

"Q. What kind of a store is it?

"A. An Italian grocery store.

"Q. Is that the same store that you had seen Centorino, Pace and the Agnello brothers leave shortly before?

"A. It is" (pp. 83-84).

* * * * *

"Q. Now, you did go to this grocery store and came out?

"A. I did" (p. 85).

IV.

Petitioner submits that he presents to the Court exactly the same construction of the record that was presented to the trial court by the Assistant District Attorney. For, solely upon the foregoing evidence, an effort was made to introduce evidence of the search and of the seizure of the can of cocaine. Objection was made to this evidence, and the following colloquy, within the hearing of the jury, ensued:

"Mr. Brancato: The place they went to search, that is, the grocery store, is a place where the defendants were seen coming out of but a short while before, probably half an hour before, the four of them, and from that place they went to the place at number 138 Union Street.

* * * * *

"Mr. Brancato: It was the defendant's place of business; that is, the place of business of Pace, who was a partner with—

* * * * *

"Mr. Brancato: I will prove that" (p. 85).

V.

Ralph Oyler, the agent in charge of the Narcotic Squad, testified, to the like effect as Manning, that he saw Centorino, before the sale was consummated, go to the store at 167 Columbia Street; he did not see what Centorino was doing inside the store, but he saw that he talked to somebody in the front "and then went on in the back" (p. 126). After ten or fifteen minutes Centorino came out with Thomas Agnello, Frank Agnello and Pace. Oyler testified that after the arrest he questioned Pace and Thomas Agnello. He asked Pace where his place of business was, and Pace answered, "No. 167 Columbia Street" (p. 133). Thomas Agnello then came over. Oyler then testified as follows:

"He came over with Pace. He said he and Pace were partners. I asked Pace if that was right and he said 'Yes'. I then asked them where they lived, again, and they said at 167. I informed him that we were going to search that house, they said, 'All right' " (p. 135).

VI.

Moog, another narcotic agent, testified that "Centorino went to 167 Columbia Street again; that is the grocery store, and he entered there and stayed about ten minutes and then came out with the Agnello brothers" (p. 191).

VII.

The foregoing states all the evidence that was offered on direct on the part of the prosecution. The professed pur-

pose on the part of the prosecution was to show that Thomas Agnello was a partner of Pace in the conduct of the grocery store at 167 Columbia Street, that Centorino entered the grocery store, went in back of the grocery store, and came out with Pace and the Agnello brothers; that this furnished warrant for a search of the entire premises at 167 Columbia Street, since it justified the belief that the cocaine, which was the subject of the sale, had been obtained either from the store, or the premises in back of the store, at 167 Columbia Street.

It was the contention of the prosecution that the record indisputably showed that Petitioners were bound by any evidence that was obtained from any part of the premises at 167 Columbia Street.

VIII.

On cross-examination of Mary Centorino, wife of the defendant Centorino, a witness for the defense, she testified that the Agnello brothers lived in the grocery store at 167 Columbia Street:

“Q. Who lives in the grocery store?

A. The two other fellows.

Q. The Agnello brothers?

A. Yes, sir.

Q. They live in the grocery store, in the back of the grocery store?

A. Yes, sir.

Q. Is that right?

A. Yes, sir” (p. 311).

IX.

Montaperto, a wholesale grocer, a witness on behalf of the defendant, testified on cross-examination that the Ag-

nellos conducted the grocery store at 167 Columbia Street. It is not made clear however whether this is intended to refer to Thomas Agnello (p. 378).

X.

Centorino, one of the defendants, testified on direct that he went to Agnello's grocery store at 167 Columbia Street, where he met and spoke to Frank Agnello (p. 398). After he left the store, and while he was standing in front of the door, Thomas Agnello and Pace came out (p. 401). On cross-examination he testified that he went to 167 Columbia Street, "the grocery store where the Agnello boys live" (p. 426), that he did not go in the room back of the store, that he did not see Pace or Thomas Agnello, but that they came out of the grocery store immediately after he left the store (p. 428).

The witness Tarodaro testified that she was never in the living rooms back of the store, but that she understood that the mother of Agnello occupied one of the two rooms (p. 468).

XI.

Frank Agnello testified that he sleeps back of the store, that Tom did not sleep back of the store but lived on Strong Place, that his family consisted of his father and mother, his brother Tom, his sister and himself, that all lived at 167 Columbia Street except Tom (p. 478).

XII.

Petitioners present that there is not a scintilla of evidence in the record to controvert the fact that they con-

ducted the grocery store at 167 Columbia Street, that this store communicated with the rooms in the rear, and that the living rooms and the store were part of one establishment.

XIII.

Petitioners present that the search of the premises at 167 Columbia Street started with a search of the grocery store, that the facts which, according to the officers, led to the search were that Thomas Agnello, Frank Agnello and Pace were seen to leave the grocery store, in company with Centorino, that the search of the living rooms in the rear was part of a continuous act, and was part of the same search.

WHEREFORE, petitioners pray that the Court may grant a rehearing of this case, and that pending such rehearing the issuance of the mandate of this Court be stayed.

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CERTIFICATE OF COUNSEL.

I, GEORGE GORDON BATTLE, of counsel to Thomas Agnello and James Pace, the petitioners herein, do certify that this petition is presented in good faith and not for delay.

GEORGE GORDON BATTLE.

boys. The statement that it was "found in their home" was held by the Court to be unfounded. But there was no ruling by the Court on the question of fact, as to whether Thomas Agnello and Pace conducted the grocery store, which connected with the living rooms in the rear. Whether the prosecuting attorney made reference to this fact in his summation does not appear. But so much emphasis had been based upon this fact in the course of the trial, that it must be presumed that the jury accepted the testimony to the effect that Thomas Agnello and Pace did own and conduct the grocery store.

V.

The can of cocaine was received in evidence against all the defendants. This was the deliberate ruling of the Court. The Court allowed "an exception to each of the defendants" (p. 491). Later the Court admitted the evidence as to Centorino, only on the second count (p. 491). Objection was made on behalf of all of the defendants to any evidence of the contents of the can, and exception duly taken (p. 494). The can was then received in evidence as against all of the defendants (p. 496). The only limitation placed by the Court upon its reception in evidence was that it was received "as against Centorino and Alba only on the second count" (p. 496). Inasmuch as the second count was dismissed, the can of cocaine and the evidence of its contents remained in the case as evidence against Pace, Frank Agnello and Thomas Agnello.

VI.

It only remains to consider the effect of the statement of the Court in the colloquy between counsel that arose

during the summation of the prosecuting attorney. When objection was made by the attorney for Frank Agnello and Alba to any reference to the can of cocaine on the ground that the second count had been dismissed, the Court stated that "It is only admissible against Frank Agnello, his own home" but overruled the objection based on the ground stated by this attorney (p. 503). If this Court finds that the officers had no right to search a floor of the building which consisted of a single establishment, part of which was occupied by Thomas Agnello and Pace, for the reason that such search constituted a violation of his Constitutional rights, then we submit that the effect of this search should not be minimized because of a statement made by the Court in the course of colloquy, which was at variance with the deliberate ruling of the Court. This statement was not part of the charge. It is to be read in the light of all the circumstances. The suggestion that the matter should have been covered by a specific request to charge, we submit, has no application to a case where the Court has immediately before its charge directly and definitely ruled upon the proposition, after a complete presentation of the arguments and statement of the objections to the evidence. In any case whatsoever which involves these important Constitutional rights, it is dangerous to sacrifice the substance of these rights to the possibility that the jury may have heard and understood the statement of the Court, made in colloquy, followed immediately by a ruling of the Court which sustained the District Attorney, and overweighed as it was by the ruling of the Court which admitted the evidence over the repeated objection of all the defendants. The fact that it was then argued that the can was found in the home of the Agnello boys, and that this

statement was corrected by the Court, did not overcome the unquestioned and unquestionable fact that Thomas Agnello and Pace did operate and conduct the grocery store. Upon all the rulings of the Court the jury consistently could have found that, while Thomas Agnello did not live in the rooms in the rear of the store, he did conduct the grocery store which controlled the access to the rear rooms, and in view of the fact that Frank Agnello denied any knowledge that would explain the finding of the can of cocaine in his bedroom, the jury might well have found that that furnished additional evidence for imputing responsibility for the can of cocaine to Thomas Agnello.

VII.

The search of the bedroom occupied by Frank Agnello was a violation of the Constitutional rights of Thomas Agnello and of James Pace. The right to search a store, or a home, or an apartment, should not be made to depend upon the fact that the particular room searched was not immediately occupied by the person against whom the evidence is offered. In this case we submit that no search could have been made of the cellar, nor of the yard around the building; nor could a search of the bedroom occupied by the mother and father be made so as to obtain evidence against Frank Agnello, who occupied the adjoining bedroom. Every reason that has ever been urged in support of the Constitutional right of a person to be secure and

safe in his home and in his establishment is against making such fine distinctions.

It is respectfully submitted that a re-hearing should be granted to Thomas Agnello and James Pace, and that upon such re-hearing, the judgment of the Circuit Court of Appeals as to Thomas Agnello and James Pace should be reversed.

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GEORGE GORDON BATTLE,
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Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THOMAS AGNELLO ET AL., PETITIONERS,
v.
THE UNITED STATES, RESPONDENT. } No. —.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

CONCURRENCE BY UNITED STATES IN ISSUANCE OF WRIT.

STATEMENT.

The United States deeming the question of search and seizure decided below to be one of general public importance, and one that should be authoritatively decided by this Court to the end that there may be uniformity of action on the part of Government officers in the enforcement of the so-called anti-narcotic statute throughout the country, hereby joins with petitioners in requesting that the writ of certiorari issue as prayed for.

JAMES M. BECK,
Solicitor General.

APRIL, 1923.

SUPREME COURT OF THE UNITED STATES.

No. 6.—OCTOBER TERM, 1925.

Thomas Agnello et al., Petitioners,	}	Writ of Certiorari to Circuit Court of Appeals, Second Circuit.
vs.		
United States of America.		

[October 12, 1925.]

Mr. Justice BUTLER delivered the opinion of the Court.

Thomas Agnello, Frank Agnello, Stephen Alba, Antonio Centorino and Thomas Pace were indicted in the District Court, Eastern District of New York, under § 37, Criminal Code, c. 321, 35 Stat. 1088, 1096, for a conspiracy to violate the Harrison Act, c. 1, 38 Stat. 785, as amended by §§ 1006, 1007, 1008 of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1130. The indictment charges that defendants conspired together to sell cocaine without having registered with the Collector of Internal Revenue and without having paid the prescribed tax. The overt acts charged are that defendants had cocaine in their possession, solicited the sale of it, met in the home of defendant Alba at 138 Union Street, Brooklyn, and made arrangements for the purpose of selling it, brought a large quantity of it to that place, and sold it in violation of the Act. The jury found defendants guilty. Each was sentenced to serve two years in the penitentiary and to pay a fine of \$5,000. The Circuit Court of Appeals affirmed the judgment. 290 Fed. 671.

The evidence introduced by the government was sufficient to warrant a finding of the following facts: Pasquale Napolitano and Nunzio Dispenza, employed by government revenue agents for that purpose, went to the home of Alba, Saturday, January 14, 1922, and there offered to buy narcotics from Alba and Centorino. Alba gave them some samples. They arranged to come again on Monday following. They returned at the time agreed. Six revenue agents and a city policeman followed them and remained on watch outside. Alba left the house and returned with Centorino. They did not then produce any drug. After discussion and the refusal

of Napolitano and Dispenza to go to Centorino's house to get the drug, Centorino went to fetch it. He was followed by some of the agents. He first went to his own house, 172 Columbia Street; thence to 167 Columbia Street,—one part of which was a grocery store belonging to Pace and Thomas Agnello, and another part of which, connected with the grocery store, was the home of Frank Agnello and Pace. In a short time, Centorino, Pace and the Agnellos came out of the last mentioned place, and all went to Alba's house. Looking through the windows, those on watch saw Frank Agnello produce a number of small packages for delivery to Napolitano and saw the latter hand over money to Alba. Upon the apparent consummation of the sale, the agents rushed in and arrested all the defendants. They found some of the packages on the table where the transaction took place and found others in the pockets of Frank Agnello. All contained cocaine. On searching Alba, they found the money given him by Napolitano.

And as a part of its case in chief, the government offered testimony tending to show that, while some of the revenue agents were taking the defendants to the police station, the others and the city policeman went to the home of Centorino and searched it but did not find any narcotics; that they then went to 167 Columbia Street and searched it, and in Frank Agnello's bedroom found a can of cocaine which was produced and offered in evidence. The evidence was excluded on the ground that the search and seizure were made without a search warrant. In defense, Centorino and others gave testimony to the effect that the packages of cocaine which were brought to and seized in Alba's house at the time of the arrests had been furnished to Centorino by Dispenza to induce an apparent sale of cocaine to Napolitano, that is, to incite crime or acts having the appearance of crime for the purpose of entrapping and punishing defendants. Centorino testified that, after leaving Napolitano and Dispenza with Alba at the latter's home, he went to his own house and got the packages of cocaine which had been given him by Dispenza and took them to 167 Columbia Street, and there gave them to Frank Agnello to be taken to Alba's house. Frank Agnello testified on direct examination that he received the packages from Centorino but that he did not know their contents, and that he would not have carried them if he had known that they contained cocaine

or narcotics. On cross examination, he said that he had never seen narcotics. Then, notwithstanding objection by defendants, the prosecuting attorney produced the can of cocaine which the government claimed was seized in Agnello's bedroom and asked him whether he had ever seen it. He said he had not, and specifically stated he had never seen it in his house. In rebuttal, over objections of defendants, the government was permitted to put in the evidence of the search and seizure of the can of cocaine in Frank Agnello's room, which theretofore had been offered and excluded.

The case involves the questions whether search of the house of Frank Agnello and seizure of the cocaine there found, without a search warrant, violated the Fourth Amendment, and whether the admission of evidence of such search and seizure violated the Fifth Amendment. The Fourth Amendment is: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The provision of the Fifth Amendment invoked is this: "No person . . . shall be compelled in any criminal case to be a witness against himself."

The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody is not to be doubted. See *Carroll v. United States*, 267 U. S. 132, 158; *Weeks v. United States*, 232 U. S. 383, 392. The legality of the arrests or of the searches and seizures made at the home of Alba is not questioned. Such searches and seizures naturally and usually appertain to and attend such arrests. But the right does not extend to other places. Frank Agnello's house was several blocks distant from Alba's house, where the arrest was made. When it was entered and searched, the conspiracy was ended and the defendants were under arrest and in custody elsewhere. That search cannot be sustained as an incident of the arrests. See *Silverthorne Lumber Co. v.*

United States, 251 U. S. 385, 391; *People v. Conway*, 225 Mich. 152; *Gamble v. Keyes*, 35 S. D. 645, 650.

Under the Harrison Act (§ 8; § 1 as amended by § 1006) it is unlawful for any person who has not registered and paid a special tax, to have cocaine in his possession, and all unstamped packages of such drug found in his possession are subject to forfeiture. We assume, as contended by the government, that defendants obtained from Frank Agnello's house the cocaine that was taken to Alba's house and there seized; that the can of cocaine which later was found in Agnello's house was unlawfully in his control and subject to seizure, and that it was a part of the cocaine which was the subject matter of the conspiracy.

The government cites *Carroll v. United States*, *supra*; but it does not support the search and seizure complained of. That case involved the legality of a search of an automobile and the seizure of intoxicating liquors being transported therein in violation of the National Prohibition Act. The search and seizure were made by prohibition agents without a warrant. After reference to various acts of Congress relating to the seizure of contraband goods, the court said (p. 153): "We have made a somewhat extended reference to these statutes to show that the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." It was held that, "The facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." (p. 162.) And on that ground the court held the search and seizure without warrant justified.

While the question has never been directly decided by this court, it has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a

lawful arrest therein. *Boyd v. United States*, 116 U. S. 616, 624, *et seq.*, 630; *Weeks v. United States*, *supra*, 393; *Silverthorne Lumber Co. v. United States*, *supra*, 391; *Gould v. United States*, 255 U. S. 298, 308. The protection of the Fourth Amendment extends to all equally,—to those justly suspected or accused, as well as to the innocent. The search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws. Congress has never passed an act purporting to authorize the search of a house without a warrant. On the other hand, special limitations have been set about the obtaining of search warrants for that purpose. Thus, the National Prohibition Act, approved October 28, 1919, c. 85, Tit. II, § 25, 41 Stat. 305, 315, provides that no search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor or is in part used for business purposes, such as store, shop, saloon, restaurant, hotel or boarding house. And later, to the end that government employees without a warrant shall not invade the homes of the people and violate the privacies of life, Congress made it a criminal offense, punishable by heavy penalties, for any officer, agent or employee of the United States engaged in the enforcement of any law to search a private dwelling house without a warrant directing such search. Act of November 23, 1921, c. 134, § 6, 42 Stat. 222, 223. Safeguards similar to the Fourth Amendment are deemed necessary and have been provided in the constitution or laws of every State of the Union.* We think there is no state statute authorizing the search of a house without a warrant; and, in a number of state laws recently enacted for the enforcement of prohibition in respect of intoxicating liquors, there are provisions similar to those in § 25 of the National Prohibition Act. Save in certain cases as incident to arrest, there is no sanction in the decisions of the courts, federal or state, for the search of a private dwelling house without a warrant. Absence of any judicial approval is persuasive authority that it is unlawful. See *Entick v. Carrington*, 19 Howard's State Trials, 1030, 1066. Belief, however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place

*See p. 1268, Index Digest of State Constitutions (prepared for New York State Constitutional Convention Commission, 1915); also § 8, c. 7, Consolidated Laws, New York, as amended by L. 1923, c. 80.

without a warrant. And such searches are held unlawful notwithstanding facts unquestionably showing probable cause. See *Temperani v. United States*, 299 Fed. 365; *United States v. Rembert*, 284 Fed. 996, 1000; *Connelly v. United States*, 275 Fed. 509; *McClurg v. Brenton*, 123 Ia. 368, 372; *People v. Margolis*, 220 Mich. 431; *Childers v. Commonwealth*, 198 Ky. 848; *State v. Warfield*, 184 Wis. 56. The search of Frank Agnello's house and seizure of the can of cocaine violated the Fourth Amendment.

It is well settled that, when properly invoked, the Fifth Amendment protects every person from incrimination by the use of evidence obtained through search or seizure made in violation of his rights under the Fourth Amendment. *Boyd v. United States*, *supra*, 630, *et seq.*; *Weeks v. United States*, *supra*, 398; *Silverthorne Lumber Co. v. United States*, *supra*, 391, 392; *Gouled v. United States*, *supra*, 306; *Amos v. United States*, 255 U. S. 313, 316. The government contends that, even if the search and seizure were unlawful, the evidence was admissible because no application on behalf of defendant was made to the court for the return of the can of cocaine. The reason for such application, where required, is that the court will not pause in a criminal case to determine collateral issues as to how the evidence was obtained. See *Adams v. New York*, 192 U. S. 585, 594, affirming 176 N. Y. 351. But in this case, the facts disclosing that the search and seizure violated the Fourth Amendment were not in controversy. They were shown by the examination of the witness called to give the evidence. There was no search warrant; and from the first, the position of the government has been that none was necessary. In substance, Frank Agnello testified that he never had possession of the can of cocaine and never saw it until it was produced in court. There is nothing to show that, in advance of its offer in evidence, he knew that the government claimed it had searched his house and found cocaine there, or that the prosecutor intended to introduce evidence of any search or seizure. It would be unreasonable to hold that he was bound to apply for the return of an article which he maintained he never had. Where by uncontroverted facts, it appears that a search and seizure were made in violation of the Fourth Amendment, there is no reason why one whose rights have been so violated and who is sought to be incriminated by evidence so obtained, may not invoke protection of the

Fifth Amendment immediately and without any application for the return of the thing seized. "A rule of practice must not be allowed for any technical reason to prevail over a constitutional right. *Gould v. United States, supra*, 313. And the contention that the evidence of the search and seizure was admissible in rebuttal is without merit. In his direct examination, Agnello was not asked and did not testify concerning the can of cocaine. In cross examination, in answer to a question permitted over his objection, he said he had never seen it. He did nothing to waive his constitutional protection or to justify cross examination in respect of the evidence claimed to have been obtained by the search. As said in *Silverthorne Lumber Co. v. United States, supra*, 392, "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all." The admission of evidence obtained by the search and seizure was error and prejudicial to the substantial rights of Frank Agnello. The judgment against him must be set aside and a new trial awarded.

But the judgment against the other defendants may stand. The introduction of the evidence of the search and seizure did not transgress their constitutional rights. And it was not prejudicial error against them. The possession by Frank Agnello of the can of cocaine which was seized tended to show guilty knowledge and criminal intent on his part; but it was not submitted as attributable to the other defendants. During the summing up of the case to the jury by the prosecuting attorney, the court distinctly indicated that the evidence was admissible only against Frank Agnello. The other defendants did not request any instruction to the jury in reference to the matter, and they do not contend that any erroneous instruction was given. *Isaacs v. United States*, 159 U. S. 487, 491.

The packages of cocaine seized at Alba's house were carried to that place by Frank Agnello. He did this at the instance of Centorino; and in his behalf it is claimed he acted innocently and without knowledge of the contents of the package. The evidence of the search and seizure made in his house tended to show that he knew what he was doing and was a willing participant in the conspiracy charged. But so far as concerns the other defendants, it is immaterial whether he acted innocently and without knowledge of the contents of the package or knowingly to effect the object of

the conspiracy. In either case, his act would be equally chargeable to his codefendants. They are not entitled to a new trial. See *Rossi v. United States*, 278 Fed. 349, 354; *Belfi v. United States*, 259 Fed. 822, 828; *Feder et al. v. United States*, 257 Fed. 694; *Browne v. United States*, 145 Fed. 1, 13; *United States v. Cohn*, 128 Fed. 615, 626.

Judgment against Frank Agnello reversed; judgment against other defendants affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.